BEFORE THE BOARD OF PROFESSIONAL RESPONSIBILITY

David Jonathan Tulis	)	
% 10520 Brickhill Lane, Soddy-Daisy 37379	)	
(423) 316-2680 davidtuliseditor@gmail.com	)	Case No.
Complainant	)	
V.	)	BPR District 3
	)	
COTY WAMP	)	
District attorney general	)	
Respondent	)	

Complaint against attorney for breach

Comes now petitioner press member under Tenn. const. art. 1 sect, 19 to demand COTY WAMP, respondent, a practicing attorney under Tennessee license, for official oppression and official misconduct by her person under color of office.

1. Petitioner's demand for her suspension based on two instances of misconduct. (1) respondent's bid by in-court motion to close the courts building to a member of the press to censor coverage, and, (2) her attack on his religious ministry of legal combat as next friend serving a falsely arrested citizen.

2. Her suit against petitioner arising out of a motion in State v. Ray Rzeplinski, case No. 31674, to bar relator from the Hamilton County courts building at 600 Market St., Chattanooga, singles him out with malice and prejudice and abrogates the press function "to examine the proceedings" to hold government officials accountable for their acts, guaranteed in the state constitution at art. 1, sect. 19, be abrogated. For the press to function, citizens have a guarantee in Tenn. const. Art. 1, sect. 17, "[T]hat all courts shall be open," enjoyment of which right, too, respondent would abrogate. The second instance of malfeasance under color of

law is in the context of State v. Tamela Grace Massengale, which defendant has an absolute right to counsel of her choice, and her choice of relator as counsel under her power of attorney and his acceptance of this office was, according to respondent, the unlicensed practice of law ("UPL") at Tenn. code ann. § 23-3-101 *et seq*, a crime.

3. In these two instances, respondent's actions under color of office attacks the enjoyment of four constitutionally guaranteed, inherent, unalienable and God-given rights protected by State of Tennessee, these being (1) press, (2) open courts, (3) religious practice, and (4) right of remonstrance and address. Respondent holds petitioner's exercise of these rights require abatement (Rzeplinski case press coverage) or a suppression as crime (Massengale assistance).

4. Petitioner demands the board examine relevant law so respondent can show cause why she should not be suspended or disbarred for breach of law.

Jurisdiction

The board has jurisdiction to hear this matter pursuant to Sup.Ct.Rules, Rule 9, § 4, creating the Board of Professional Responsibility of the Supreme Court of Tennessee "[t]o consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention." Attorney acting as publicly elected district attorney general nevertheless remains subject to the code of professional responsibility, and may be suspended or disbarred for misconduct, even though exclusive method for removal from office is impeachment. Sup.Ct.Rules, Rule 8, Code of Prof.Resp., Canon 1 et seq.; Sup.Ct.Rules, Rule 9, § 1 *et seq.* Ramsey v. Board of Professional Responsibility of Supreme Court of

Tennessee, 1989, 771 S.W.2d 116, certiorari denied 110 S.Ct. 278, 493 U.S. 917, 107 L.Ed.2d 258.

Parties

5. Petitioner runs 107.5 FM radio station and others in the local Copperhead Radio Network in Chattanooga. He reports on the airwaves, at TNtrafficticket.US and on DavidTulis.Substack.com under guarantees of the federal 1st amendment and Tenn. const. Art. 1, sect. 19, "[t]hat the printing press shall be free to every person."

6. Respondent Coty Wamp is elected district attorney general of the 11th judicial district and a public servant. She works in an office at 600 Market St., Suite 310, Chattanooga, Tenn. 37402.

Factual background

7. Relator complainant has been a member of the press in Chattanooga most of his life, having worked 24 years as a copy editor at the Chattanooga Times Free Press and for 13 years as commentator and reporter in radio, first at Copperhead Radio, then NoogaRadio Network and now at 107.5 FM and the Copperhead Radio Network.

8. He has reported extensively on criminal cases State v. Rzeplinski and State v. Massengale.

9. Respondent has used her office twice in exercise of her law enforcement authority vis a vis relator in his exercise of constitutionally guaranteed rights, as follows.

1. Rzeplinski case coverage

10. The Hamilton County criminal court, the state and Rzeplinski parties set July 29, 2024, a Monday, as trial date in State v. Raymond Rzeplinski, division II, No. 316374.

11. Complainant has been covering the case – the only press outlet eyeing what his reporter called a vindictive prosecution, with petitioner's coverage suggesting the case is ripe for jury nullification to thwart the routine operation of what one legal historian calls America's "conviction factory." [1] Respondent charged defendant as being a felon in possession of firearms.

12. On July 25, 2024, the Thursday before trial, respondent files State's motion regarding attempts at jury nullification. **EXHIBIT No. 1**. Respondent motion to censor. It demands the court order relator be barred not just from the Rzeplinski trial courtroom, but the entirety of the publicly accessible areas of the court's building.

13. The grounds of the demand are that reporting and commentary in favor of jury power and jury nullification has "tainted the jury pool" and that such expression implies he would be disruptive as a citizen listening in at the trial or as a reporter under Rule 30 media rules were he to use press equipment such as laptop, camera and audio recorder to gather material for his report.

[1] Roger Roots, *The Conviction Factory; the Collapse of America's Criminal Courts* (Livingston, Mont.: Lysander Spooner University Press, 2014) 287pp

14. The injunction suit against relator Tulis is e-mailed to the court Thursday evening, a copy is served on Ben McGowan, Mr. Rzeplinski's attorney, Respondent omits service or notice to petitioner.

15. Complainant learns about her filing that evening and prepares a defense. Next day, July 26, 2024, Friday, around noon, he files with the court as relator in the name of the state Objection to motion to censor, demand for sanctions, demanding a hearing. **EXHIBIT No. 2.** Relator objection to censorship.

16. Monday morning at roughly 8:45, the bailiff hands petitioner the court's answer, an order denying motion to censor on free press and open courts grounds. **EXHIBIT No. 3.** Court's ruling protecting press, open courts.

17. The court readily accepts relator's presence during Rzeplinski proceedings as member of the public, granting his timely filed Rule 30 request for use of his laptop and other devices as member of the press.

18. The court says that the dispute between respondent and state of Tennessee on relation over respondent's motion of threat against his rights will be held "in abeyance" until after the trial.

2. Attack on remonstrance & religion rights, 'next friend' role

19. Tamela Grace Massengale is a crime victim falsely imprisoned and arrested under an arrest warrant policy of Hamilton County's chief magistrate, Lorrie Miller. Respondent criminally prosecuted Mrs. Massengale in case no(s). 1941912 and 1941913 in the general sessions court before dropping the case, which is expunged. The arrest and jailing of Mrs. Massengale are without probable cause.

20. Tenn. const. Art. 1, sect. 17, requires "that all courts shall be open." The door to the Hamilton County magistrate's office, however, is closed and locked to the public in breach of this provision. The magistrate bars members of the public from drafting and submitting under oath before the magistrate warrants for arrest, which warrant the magistrate, who is supposed to be a neutral third party, accepts or rejects.

21. The locked door to the magistrate's office is not a bar to all. The county's program of "doggie door warrants" allows police officers and deputies instant access to the magistrate through, as it were, a small door near the floor, mandating that only government employees may enter and that they must necessarily proffer and obtain hearsay-only arrest warrants.

22. Hearsay is accepted in an arrest warrant, but is by no means required. The policy denies magistrate access to first-hand facts witnesses and crime victims with first-hand knowledge of an offense. The requirement that only hearsay-only warrants issue is a departure from law.

23. Press member complainant has reported on this unconstitutional program in detail. In a Dec. 26, 2023, letter he demands Mrs. Miller the basis for her program. See p. 19, EXHIBIT No. 4, Tulis Dec. 26, 2023, demand letter to magistrate Miller

24. Relator sends this letter to the county's three criminal court judges. Radio news reporting on NoogaRadio Network, extensive coverage at TNtrafficticket.us, oral demands for reform before the county commission, detailed written legal notice to the commission, and relator demands before criminal court judges, including Hamilton County criminal court Judge Boyd Patterson, bring the public no relief from the due process violations that thrive under Magistrate Miller's doggie-door warrants.

25. Relator's concern is not just on behalf of members of the public, but for benefit of public servants. As parties are involved in an illegal program, they are in their estates and properties personally liable for harm caused upon such as Mrs. Massengale. Exposing municipal parties to personal liability is not according to law and is not good public policy for Hamilton County.

26. The office of magistrate is at the center of much police power abuse in Hamilton County. Complainant has reported doggie door arrest warrant policy has injured truck driver Michael James, pallet recycler Shameca Burt (108 days in Silverdale), a rape victim identified to the courts, and Mrs. Massengale. Officers have instant access to the magistrate for creation of arrest warrants based on one-side-only hearsay, unsworn by a purported victim, which harm is that created upon Mrs. Massengale.

27. Doggie door warrants degrade the quality of cases handled by public defenders and district attorney lawyers, and are a manifest injustice that should shock the conscience of any public servant hearing of the problem.

28. Mrs. Massengale intends to challenge this system, which she insists is proper to her defense in her criminal case and a sure benefit to the larger public. She pleads petitioner help her bring an end to the mass injury policy accepted as proper *status quo* by all county public officials, with no exception known to relator or Mrs. Massengale. She asks the injury done her be converted into a restorative and balm upon the people's injured rights.

29. Mrs. Massengale is a crime victim in a Venmo refund scam. The arrest warrant upon her is premised on a phone call made to Chattanooga police department employee Brandi Siler, a policewoman, who uses the magistrate's office "doggie

door" to present an unsworn hearsay-only draft arrest warrant and charging instrument to the magistrate.

30. Magistrate Blake Murchison accepts Ms. Siler's draft as an arrest warrant. He makes no determination that Ms. Siler investigated Mrs. Massengale's side of the story, or finds no fault in learning that Ofcr. Siler hasn't.

31. Mrs. Massengale's arrest, jailing and prosecution, lacking probable cause, is void from inception.

32. On her request, while State v. Massengale is pending in county sessions court, complainant swings into action on behalf of state of Tennessee on relation under religious motivation and purpose.

33. Petitioner in role as next friend files Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for writ of certiorari, seeking to remove the case from the court of Judge Larry Ables so that the cause might be dismissed ministerially in a court of record, and reform imposed. **EXHIBIT No. 4**. Remonstrance, certiorari filing in Massengale case

34. Criminal has adjudicative and supervisory authority to order a straightening up of the Hamilton County magistracy into its constitutional posture under Tenn. Code Ann. § § 40-6-203, 204, 205 and Tenn. R.Crim Proc. Rules 3 and 4, relator contends.

35. In e-mail serving respondent, petitioner states, "Mrs. Massengale is in Judge Able's court Monday morning. I don't want it dismissed, I want it *elevated* so Judge Dunn or one of the other two judges will have unquestioned jurisdiction over it even though it is void as a matter of law. I filed notice with sessions about

the filing, enclosing a copy. A clerk said he would take it immediately to Judge Ables."

36. On July 10, 2024, petitioner joins with Mrs. Massengale in her initial appearance before Judge Ables. A published transcript of the hearing indicates the court rejects Mrs. Mssengale's choice of counsel, as she expresses it in alignment with her affidavit of appointment. **EXHIBIT No. 5**. Press report. [2]

37. The 6th amendment says "In all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defense." The Tennessee constitution guarantees in art. 1, sect. 9, "That in all criminal prosecutions, the accused hath the right to be heard by himself ***and*** his counsel" (emphasis added).

38. The court is visibly angry on grounds that counsel of choice means only attorney of choice, and no person other than a licensee in privileged business under the Tennessee supreme court may speak with or for the accused or serve her.

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[2] Mrs. Massengale in court attests: "I would like the court to recognize David Tulis as my next friend and counsel. By appointing him, I'm exercising my rights to appoint anyone of my choice for counsel. David is not an attorney. Nor has he ever claimed to be an attorney. David is just my next friend. To define next friend *** David is someone that I trust. David is someone that has knowledge of my case. David is someone that is much more knowledgeable in the law than I am. He is somebody that I look to for his opinion, somebody that I look to for support, and somebody that I trust. I also appoint David to speak for me on my behalf when needed. The court's recognition of David's status as my next friend must come first. If David is not recognized by this court as my next friend and I am denied this constitutional right and I feel that this court is not properly set and I will not be able to proceed." "TRANSCRIPT: Judge threatens police victim 'next friend' as case defies illegal arrest warrants," Davidtulis.substack.com, May 14, 2024, p. 4.. Link is incorporated by reference
https://davidtulis.substack.com/p/transcript-judge-threatens-police

39. The sessions court rejects petitioner's claim of Christian ministerial and advocacy service on Mrs. Massengale's part. As witnessed by three assistant district attorneys serving respondent, the court berates petitioner as a lawbreaker subject to criminal prosecution under the unlicensed practice of law statute. The court denies petitioner's presentation of his religious premise, and says that not receiving valuable consideration is irrelevant because he drafted legal papers and stands in presence of the court with the accused. Drafting, filing, standing to address a court are enough, he says, to constitute unlicensed practice of law, regardless of the lack of valuable consideration. [3]

40. The sessions court assigns Mike Little as public defender. He files a motion on Mrs. Massengale's behalf for the court to strike Mrs. Massengale's remonstrance and petition and defeat her intentions. See EXHIBIT No. 1 p. 30, public defender's motion to strike.

41. On June 4, 2024, the Hamilton County criminal court Judge Amanda Dunn issues Order of dismissal as to petition for writ of certiorari on grounds of standing. **EXHIBIT No. 6**. Denial of certiorari petition.

42. Respondent drops the charges against Mrs. Massengale. Refusal to prosecute indicates its defective origins, admits it to have been a false imprisonment and false arrest, an actionable tort by officer Siler and others, lacking probable cause,

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[3] In UPL at § 23-3-101, "valuable consideration" is an essential element of the offense:

> (1) "Law business" means the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the doing of any act for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services.

lacking any sworn statement by the purported crime victim, and an injury to the peace and tranquility of the state.

43. A criminal court judge inks the expungement order for the Massengale case.

44. Respondent sends relator a letter dated May 6, 2024, alleging that he is involved in unlicensed practice of law. The DA "does not plan on charging you" for assisting Mrs. Massengale but, respondent says, "future violations of this statute on your part will lead to criminal charges." **EXHIBIT No. 7**. Respondent's letter to petitioner.

45. Respondent's premise is that the UPL law forbids any advocacy, remonstrance or address before the judicial branch of government, or before any of its public servants, and that only paid licensed attorneys exercising a state privilege as a for-profit business may speak to courts and judges. The letter says relator is performing activities that can be done only under state privilege and only by law advocates so licensed to draft legal documents and file papers and to speak with and for a defendant before a court.

46. Respondent says she will criminally prosecute relator if he attempts to assist any other person, whom she effectively states cannot have counsel of that person's choice if that person happens to light upon relator as sagacious proponent of due process rights and likely to assist that person in defense of local policing for profit or other abuse.

> Second, you claim that you are not operating a law business or practice. This would indeed indicate that you would not be charged under the "law business" portion of Tenn. Code Ann. $ 23-3-103(a). However, if you refer to the above-quoted statutes, you will see that the drawing up and filing of your "Notice of petition for petition for

> writ of certiorari" qualifies a "drawing of papers, pleadings, or documents" on behalf of another individual." Furthermore, you have held yourself out repeatedly as "representing" Tamela Grace Massengale, which is indicative of your unauthorized practice of law. This claim of representation has been witnessed by members of our office, by the Court, and in writing on your website.

Wamp letter, pp. 2, 3

47. The implication of this statement — "would not be charged under the 'law business' portion of Tenn. Code Ann. § 23-3-103(a)" — is that respondent has authority to prosecute a person for UPL apart from the essential element of valuable consideration.

Legal authorities

48. The legal authorities involved in this complaint include the rules of professional responsibility, laws pertaining to the rights of press, the right to open courts, the right (and duty) of free assembly for purpose of remonstrance and address, and the right of religion, all of which respondent challenges in her office of trust as district attorney general and as licensee subject to the board and the supreme court.

Rules of professional conduct

49. The supreme court's rules governing the privilege of law practice are Rule 8. This case invokes Rule 3.3 regarding allegations of false statements about law. "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; or (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." A lawyer is forbidden "from making misleading legal argument." which is one "based on a knowingly false representation of law

[that] constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case."

50. Rule 1.2 prohibits an attorney aiding in crime, and impliedly committing crime: "(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent[.]"

51. Misconduct is prohibited. "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice." Rule 8.4.

52. The fact narrative of this case touches on systemic judicial abuses in Hamilton County, particularly as regards the poor and how built-in violations of due process against them as reported by press member complainant "undermine public confidence in the administration of justice," quoting from court comment on rule 8.2.

53. From the preamble of the supreme court's rules of professional responsibility, "[7] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by

the legal profession. *** [A] lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education" and "should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance." A licensee "should help the bar regulate itself in the public interest."

Oppression law

54. Complainant highlights the official oppression statute at § 39-16-403 to bring into view "[a] public servant acting under color of office or employment [who] commits an offense who: (1) **Intentionally subjects another to mistreatment** or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or (2) Intentionally **denies or impedes another in the exercise or enjoyment of any right, privilege,** power or immunity, when the public servant knows the conduct is unlawful" (emphasis added).

Privilege law

55. Respondent accuses petitioner of acts forbidden if not done under privilege. Privilege is required in operation of a business subject to state requirement. "The tax here in suit was not a tax levied upon complainant's water, but was a privilege tax levied upon the business of *selling* the water." Seven Springs Water Co. v. Kennedy, 156 Tenn. 1, 299 S.W. 792, 5 (1927) (emphasis added).

56. However, *selling legal filings and holding forth as one who sells legal filings and makes court appearances* require a tax be paid for the privilege of becoming a state-licensed attorney. If one is entering into a business, the first act of that business is subject to privilege, if indeed business is the intention of the actor.

> It follows that the Legislature cannot tax a single act, per se, as a privilege, inasmuch as such act, in the nature of things, cannot, in and of itself, constitute a business, avocation, or pursuit. Hence it is a matter of importance **"whether they make a business of it, or not," since if they do not, there is no privilege to be subjected to taxation**. This portion of the statute must therefore be held nugatory.
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> Yet the proof of a single act which is characteristic of any of the privileges created by the Legislature is by no means unimportant, because evidence of such act necessarily casts the **burden of proof upon the defendant to show that he was not in fact exercising the privilege**; that is, **engaged in a business or occupation** of the kind indicated by the act. The doing of such act makes a prima facie case against him.
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> Indeed, the doing of a single act may itself be conclusive evidence of the fact of one's entry upon a given business, as where a merchant, after having procured his goods and placed them in his store, **opens his doors and makes one sale,** or where an abstract company, after having prepared its books of reference and procured its office, issued **one abstract**, or where a photographer, after having prepared himself for business, takes **one picture**, or an auctioneer sells, as such, **one article**, or a real estate agent **makes one sale**, and so on.
>
> In entering upon a business there is **a union of act and intention** — the purpose to enter thereon, and the consummation of that purpose by making a beginning, performing the initial act.

Trentham v. Moore, 111 Tenn. 346, 76 S.W. 904, 904 (1903) (emphases added)

57. Privilege is a calling, occupation or vocation that affects the public interest, and requires a license, having always a first sale, as the Trentham court notes. The constitution provides only one other way for taxation in Tennessee. *Ad valorem.* With privilege, the state's authority is recognized in Tenn. const. art. 2, sect. 28.

"The Legislature shall have power to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct, and the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange."

58. In the Seven Springs Water case, "Complainant was a farmer near Knoxville and had a spring of water on his place. The water had no mineral or medicinal properties of value, but seems to have been a pure and palatable drinking water. Complainant, therefore, began putting the water in suitable containers and selling and delivering it to customers in different parts of Knox County." The court says that while the water at issue comes from the soil, and might otherwise not be taxable, the mineral water dealers law "clearly imposes the tax upon one engaged in the business of selling 'either distilled water or water from springs or well or mineral water,'" *Id.*, Seven Springs Water at 6.

59. The cases make distinction between **property** and ***activity*** subject to excise or privilege tax. Owning a stallion is not taxable, nor requires the privilege. But "[keeping] a stallion or jack, for mares" is. That is selling reproductive services for profit, requiring an excise tax be paid. Cate v. State, 3 Sneed, 121. The state may impose a fee on dogs under police powers, "to protect the safety of the people and of property from their offensive and destructive propensities"; but it can't raise revenue by converting ownership into a privilege where objects are taxed merely or existing. State v. Erwin, 139 Tenn. 341, 200 S.W. 973, 973–74 (1918).

60. Case law recognizes no distinction between a privilege tax and an excise tax. See Bank of Commerce & Trust Co. v. Senter, 260 S.W. 144, 148 (Tenn. 1924) ("Whether the tax be characterized in the statute as a privilege tax or an excise tax is but a choice of synonymous words, for an excise tax is an indirect or privilege

tax."); American Airways, Inc. v. Wallace, 57 F.2d 877, 880 (M.D. Tenn. 1937) ("The terms 'excise' tax and 'privilege' tax are synonymous and the two are often used interchangeably."); see also 71 AM JUR. 2d State and Local Taxation §24, ("The term 'excise tax' is synonymous with 'privilege tax,' and the two have been used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax.") "It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege." *Jack Cole Co. v. MacFarland*, 337 S.W.2d 453, 455 (Tenn. 1960). Waters v. Chumley, Tenn: Court of Appeals 2007 No.E2006-02225-COA-R3-CV.

61. "PRIVILEGE. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens," says *Black's Law Dictionary*, 4th ed. "An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law. [citations omitted] *** An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires.*** A peculiar advantage, exemption, or immunity."

62. Trentham v. Moore lists 21 privilege cases, the leading among them being Phillips v. Lewis 3 Shann. Cas. 230 (1877) showing under privilege the levy is not upon property, but for-profit *activity* "***directed to a profit to be made off the general public."***

P. 238, 239 The language is that hereafter the keeping of dogs shall be a privilege which shall be taxed as follows, etc. In this view of the question, the real point presented is whether the simple ownership of property of any kind can be declared by the legislature a privilege, and taxed as such, for if it can be done in the case of a dog, it may be done in the case of a horse, or any other species of property. It is clear this is what is done by this statute, except that it has gone even further, and taxed a party who shall harbor or give shelter to a cur on his premises. This latter privilege, we take it, is one that will not be much sought after, but to the main question. It is evident the words, "keeping of dogs," in the statute mean simply ownership *** [.]

***

P. 240 "Merchants, peddlers and privileges," are the defined objects of taxation in the latter clause of the section. It is certain the merchant is not **taxed except by reason of his occupation**, and in order to follow or **pursue this occupation – one of profit** – in which it may be generally assumed capital, skill, labor, and talent are the elements of success, and are called into play by its pursuit. ***This pursuit or occupation is taxed, not as property, but as an occupation.*** Another element of this occupation is, that its object and pursuit is ***directed to a profit to be made off the general public***, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital, varied only in some of its incidents.

These occupations are taxed as such, and not on the ad valorem principle. So we take it the word privilege was intended to designate a larger, perhaps an indefinite class of objects, having the same or similar elements in them, **distinguishing them from property**, and these objects were to be defined by the legislature and taxed in like manner as might be deemed proper. But the essential element distinguishing the two modes of taxation was intended to be kept up. That i**s the difference between property and occupation or business dealing** with and ***reaping profit from the general public, or peculiar and public uses of property*** by which a ***profit is derived from the community***. ***

Page 241. The case of Marbury v. Tarver, 1 Hum. 94, was under the Act of 1835 *** prohibiting the keeping, or rather, using the *jackass for profit in the propagation of stock*. Here it is clear it was the **keeping of the animal, and using him for profit to be derived from the public in a particular**

> **manner, that was declared to be a privilege and taxed** as such. It is **not a tax on the jack, or for owning him or harboring him as the case before us, but a tax upon the particular public use** to which he is put, that makes the element of privilege in that case.
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> P. 243 We may concede *** that an actual license issued to the party is not an essential feature of a privilege, but is only the **evidence of this grant of the right** to follow the "occupation or pursuit," and the usual and perhaps universal incident to such grant, or that a tax receipt is, or even may be the evidence of the grant. **Still, the thing declared to be a privilege is the occupation, the license but the incident to its engagement,** described by statute, assuming, however, the license in one form or the other is to be had. We think it would be *impossible to hold, in any accurate sense, that a man could only be entitled to hold and possess his property, paid for with his money and earned by his labor, upon the condition of obtaining a license*, either from the county clerk, or a tax collector. His right is indefeasible under the constitution of the state. He can only be deprived of it by due process of law, or the law of the land as hereinafter explained.
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> P.244 "[T]he ***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 Shann. Cas. 230 (1877) (emphases added). **EXHIBIT No. 8.** Copy of case. [4]

63. Courts belong to the people. A law business making private profit in the use of courtrooms and court buildings is subject to privilege, just as a trucking company is able to use the public rights of way that belong to the people — but only under privilege, because its private profit affects the public interest.

> The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely **excluded from the category of private or personal rights** arising from citizenship. Recent decisions of the Supreme Court of the United States have determined certain fundamental principles concerning the use of the highways. One is "that the primary use of

[4] Inexplicably, Phillips v. Lewis is not on Westlaw and is nowhere to be found in digital form. Petitioner supplies the hard copy from a volume of Shannon's code.

> the state highways is the use for **private purposes;** that **no person is entitled to use the highways *for gain*** *as a matter of common right."* Hoover Motor Express Co. v. Fort, 167 Tenn. 628, 72 S.W. (2d) 1052, 1055. The statement and definition of the terms and conditions upon which a privilege, not a matter of common right, may be exercised is, we think, within the declared purpose of regulation and does not amount to prohibition. In such a case the prevention of an unauthorized exercise of the privilege is clearly implied in the statement of the purpose to regulate it.
>
> The statute under consideration is a comprehensive regulation of the use of the state highway system by both common carriers and contract carriers. It is designed, as declared in section 21, to promote and preserve economically sound transportation, to regulate the burden of use to which the highways may be subjected, to protect the safety of the traveling public, and to protect the property of the state in the highways from unreasonable, improper, or excessive use.

State v. Harris, 168 Tenn. 159, 76 S.W.2d 324, 325 (1934)

64. Roads and highways are free for use of the traveling public, for pleasure, for necessities and for enjoyment of rights. "[N]o person [corporation] is entitled to use the highways for gain." The same for the courts.

65. State law prohibits the unlicensed practice of law, or the exercise of a law business in commerce outside state privilege. The law occupation and business are property of state of Tennessee. "No person shall engage in the practice of law or do law business, or both, as defined in § 23-3-101, unless the person has been duly licensed and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both." An essential element of a law practice or business is drafting court filings or giving legal counsel for pay.

> "Law business" means the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the

> procuring of or assisting in the drawing **for valuable consideration** of any paper, document or instrument affecting or relating to secular rights, the doing of any act **for valuable consideration** in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the **soliciting** of clients directly or indirectly to provide such services;

Tenn. Code Ann. § 23-3-101 (emphases added)

66. Respondent accuses petitioner of making a living and pursuing a livelihood and occupation buying and selling legal service as lawyer and attorney when he acts as next friend to Mrs. Massengale. He is alleged to be treading upon the state's ownership of the materiel of petition, pleading, requesting, motioning to public servants in the third branch of Tennessee government, the judiciary.

67. Lawyers and attorneys are *privileged* to engage in these activities because they earn "valuable consideration" in courtrooms that belong to the people of Tennessee. They have no right to earn their livings upon the assets, property and tax-maintained infrastructure of the public.

68. Valuable consideration is an essential element of the crime of unlicensed practice of law.

Religious, petition protections

69. Whether petitioner's activities under religious motivation and protection violates the privilege requirement is a matter of law if it is stipulated he serves oppressed people *gratis*, under armature of religion with no evidence of valuable consideration received.

70. Religious activity enjoys protection under law. Petitioner is bound by religious training and "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation" United States v. Seeger, 380 U.S. 163, 173, 85 S. Ct. 850, 858, 13 L. Ed. 2d 733 (1965). Religious practice and motivation are protected, whereas "essentially political, sociological or economic considerations" or a "merely personal moral code" are not.

71. The law that binds petitioner's next friend conscience arises from the institutes of the Christian religion and the institutes of biblical law:

a. "Woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless." – Isaiah 10:1, 2

b. "Woe to those who plan iniquity, to those who plot evil on their beds! At morning's light they carry it out because it is in their power to do it. They covet fields and seize them, and houses, and take them. They defraud people of their homes, they rob them of their inheritance." Micah 2:1, 2

c. "You shall not follow a crowd to do evil; nor shall you testify in a dispute so as to turn aside after many to pervert justice." Exodus 23:2.

d. "Happy is he *** who executes justice for the oppressed, who gives food to the hungry. The LORD gives freedom to the prisoners. *** The LORD watches over strangers; he relieves the fatherless and widow; but the way of the wicked he turns upside down." Ps 146:5, 7, 9.

e. "To crush under one's feet All the prisoners of the earth, To turn aside the justice due a man Before the face of the Most High, Or subvert a man in his cause -- The Lord does not approve." Lamentations 3:35, 36.

f. Amos warns that God watches out for people who are the victims of injustice -- the abuse of law or privilege by the great against the lesser in the city. "For I know your manifold transgressions And your mighty sins: Afflicting the just and taking bribes; Diverting the poor from justice at the

gate. Therefore the prudent keep silent at that time, For it is an evil time. Seek good and not evil, That you may live; So the Lord God of hosts will be with you, As you have spoken. Hate evil, love good; Establish justice in the gate." Amos 3:12-14

g. "'Cursed is the one who perverts the justice due the stranger, the fatherless, and widow.' And all the people shall say, 'Amen!'" Deut. 27.19.

h. "He will bring justice to the poor of the people; He will save the children of the needy, And will break in pieces the oppressor." Psalm 72:4.

i. "He who despises his neighbor's sins: but he who has mercy on the poor, happy as he." Prov. 14:21. "A true witness delivers souls, but a deceitful witness speaks lies." Prov. 14:25. "A false witness will not go unpunished, and he who speaks lies will not escape." Prov. 19:5. "Do not remove the ancient landmark, nor enter the fields of the fatherless; for their redeemer is mighty; He will plead their cause against you." Prov. 23:10, 11. "Take away the dross from silver, and it will go to the silversmith for jewelry. Take away the wicked from before the king, and his throne will be established in righteousness." Prov. 25:4, 5.

72. Petitioner arguably is a person "of law knowledge," to use wording of Tenn. const. Art. 6 sect. 11 on judicial recusal. He uses what he knows for religious ends and for reform of public institutions that are part of God's created order and subject to his law. The religious charge he acts upon is the same one that directs prophets such as Moses, Ezekiel, Jeremiah, John and Paul.

73. Respondent denies relator's activity is enjoyment of religious conviction and liberty, and moves to abrogate it.

Jury tampering law

74. Respondent makes allegations about jury tampering. It is a Class A misdemeanor to "tamper with" or "taint" a juror, using terms from respondent. The act occurs when one "privately communicates with a juror with intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law" at Tenn. Code Ann. § 39-16-509. A member of the general public becomes a juror at the end of *voir dire*, when the body is empaneled and members sworn. Tenn. Code Ann. § 22-2-201(a)(2).

Next friend law

75. Respondent's analysis on next friend status held by next friend in assisting Mrs. Massengale errs by citing case law irrelevant to those facing criminal prosecution in sessions or criminal court.

76. In protecting the "closed [union] shop" of the bar, as Justice Douglas puts it in Johnson v. Avery, 393 U.S. 483, 490, 89 S. Ct. 747, 751, 21 L. Ed. 2d 718 (1969), respondent implies that a defendant such as Mrs. Massengale cannot choose a next friend to speak with or for her because courts put limits on next friend role in cases involving post-conviction relief among death row inmates. She says the doctrine of next friend is asserted in cases of "a person who is incapacitated, mentally incompetent, or suffering from another such disability," a doctrine "most often asserted during federal habeas corpus proceedings."

77. Indeed, a party attempting to be next friend of someone in prison in a capital case faces high hurdles, must produce "evidence of an inmate's present mental incompetency by attaching to the petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the

inmate's incompetence" Holton v. State, 201 S.W.3d 626 (Tenn. 2006), as amended on denial of reh'g (June 22, 2006). In a case cited by respondent, Whitmore v. Arkansas, 495 U.S. 149, 149, 110 S. Ct. 1717, 1720, 109 L. Ed. 2d 135 (1990), the death penalty case hinges "on the questions whether a third party has standing to challenge the validity of a death sentence imposed on a capital defendant who has elected to forgo his right of appeal."

78. The constitutional guarantees for counsel of one's choice may be constrained when pleaded by a death row inmate at the terminus of criminal litigation. The constitutions' provisions are directed at requirements upon the state in launching criminal cases. Constitutional provisions focus intently on criminal case *initiatory* due process starting with search, seizure, probable cause and evidence culminating in trial by jury.

79. These and other cases cited in the Wamp letter to relator show no authority to limit a defendant in a misdemeanor preliminary hearing or a criminal trial from having a next friend speak with and for her and to draw up filings in lieu of a licensed attorney. The right in the next friend controversy is not *relator's right* to be next friend. It is *defendant's* right appoint her counsel, per federal 6th amendment and the 9th article in the Tennessee bill of rights.

80. Mrs. Massengale has right to have petitioner's assistance so she can enjoy all her God-given, constitutionally guaranteed rights to due process, to address the court and to have her next friend address the court on equal footing "[t]hat in all criminal prosecutions, the accused hath the right to be heard by *[herself]* ***and*** [her] counsel" Tenn. const. Art 1, sect. 9.

81. With next friend speaking with and for her, and drafting and filing documents in her name under power of attorney, she's able "to demand the nature and cause of

the accusation against [her], and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in [her] favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the County in which the crime shall have been committed, and shall not be compelled to give evidence against [herself]" Tenn. const. art. 1, sect. 9.

82. Whether it be Mrs. Massengale's right to indictment by an unbiased grand jury or to obtain all exculpatory evidence from respondent's office under the Brady rule, she has an absolute right *not to lawyer of her choice*, but *counsel* of her choice.

83. The Whitmore court sets forth a test on whether an inmate is disabled, allowing for a next friend. "[I]n keeping with the ancient tradition of the doctrine, we conclude that one necessary condition for 'next friend' standing in federal court is a showing by the proposed 'next friend' that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability." *id.,* Whitmore at 165.

84. Mrs. Massengale is not at the end of the road in exercise of constitutional protections. She is at the beginning. Death row inmate next friend limitations do not apply to Mrs. Masengale. She has right to next friend aid, not as one "unable to litigate *** due to mental incapacity," but as one with personal authority, power to consent and *full presumption of innocence.*

85. The Hamilton County criminal court under Judge Amanda Dunn is on record as acknowledging the sect. 9 right of a defendant to "be heard by himself and his counsel." Ray Rzeplinski, represented though he was by attorney Ben McGowan, makes several addresses to the court per right.

Analysis

86. Miss Wamp's motion asks that petitioner "be barred from entry to the courtroom during the proceedings of this trial. *** [T]he state is requesting that this court bar Mr. Tulis from the courthouse until the trial has concluded and the jury is released from service" (motion pp. 1, 5). Such bar would be in the nature of Hamilton County sheriff's office deputies who would barricade the court building's two entrances from entry by petitioner.

87. Such ban is intended to prevent him from "examin[ing] the proceedings of" a "branch *** of the government" and to "restrain the right thereof" so that "free communication of thoughts and opinions" not issue from relator as he wishes to "freely speak, write, and print" about the Rzeplinski case. Respondent would have the court issue an order (a law) executed by deputies and bailiffs against relator despite art. 1, sect. 19 decree that "no law shall ever be made to restrain the right" of the press.

88. This demand in State's motion regarding attempts at jury nullification closes the courts and censors the press. In closing the court to a press member, respondent effectively closes it to the general public.

89. "The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily. *** The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance. From the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was

deliberately linked by the draftsmen. The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may 'assembl[e] for any lawful purpose' Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 576-577, 577–78, 100 S. Ct. 2814, 2827–28, 65 L. Ed. 2d 973 (1980) (internal citations omitted).

90. Respondent attacks complainant's free exercise of religion and right of petition and remonstrance. Her May 6, 2024, demand letter expresses her intention to abrogate his free exercise of religion and his right to freely gather with others to enjoy the right of address, remonstrance and 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," Tenn const. art. 1, sect. 23.

91. The results sought are censorship under color of state office, closure of the court, each forbidden by law, and prohibition of assembly from which arise petitions for redress of grievance and remonstrance such as that in the Massengale case.

92. Respondent's threats disregard the essential element of profit and gain, which omission she makes knowingly and intentionally, to bully complainant relator with erroneous arguments under color of law and under color of her office as the state's attorney in judicial district 11. She knows how privilege operates, and so has actual or putative knowledge of its essential elements. That essential element is valuable consideration, which she admits is absent in relator's doings.

93. All respondent's evidence indicates relator works for free, in religious mercy; still, she makes threat of criminal prosecution lacking the essential element of valuable consideration. Such threats are in bad faith, knowingly and intentionally false, and oppressive of the rights of complainant and the people.

94. At the hearing in Judge Ables' court, relator effectively tells the three ADAs present they have enough material to get an indictment, if such were possible. "Clearly the DAs have in this room right now all the evidence to bring indictment against me for the unlawful — the unapproved, the unauthorized — practice of law. They could do that. They've got paperwork to prove it. They've got me being here standing in front of you," citing EXHIBIT No. 5, press report, p. 6.

95. Respondent knows any man, woman or person is free to file legal papers and argue in the courts, which are open, with justice mostly not for sale in Tennessee Petitioner sued Gov. Bill Lee in State of Tennessee ex rel David Jonathan Tulis v. Bill Lee, governor, et al, case No. E2021-00436-SC-R11-CV, representing the state of Tennessee in a petition for writ of mandamus against fraud and breach of T.C.A. § 68-5-104. Starting in Hamilton County chancery court, he litigated in his proper person before four courts 878 days before getting a "certiorari denied" order from the U.S. supreme court. [5] Up until Aug. 19, 2024, he had an appeal lodged in the 6th circuit court of appeals in Cincinnati in David Jonathan Tulis v. William Orange et al, case No. 23-5804, which case included suing Roger Page, chief justice at the time of relator's false imprisonment and false arrest Nov. 6, 2021, in Franklin, Tenn., covering the secret Tennessee judicial conference.

96. In these and other cases he does his own law work, in *persona propria*, per right. A citizen's filing of legal documents and appearing before judges are not unlicensed practice of law, despite respondent's falsehoods intentionally uttered.

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[5] VAERS, the vaccine adverse event reporting system run by the U.S. government, says 1,517 jab death reports and 14,490 jab harm reports have been filed since Covid-19 shots began. That translates, given a URF (underreporting factor) of 100x, into 151,700 state deaths caused by law-breaking government policy, and 1.449 million injury events.

97. Respondent, in seeming malice, ignores T.C.A.§ 23-3-101(1). Chapter definitions. On p. 2 of her letter she says relator's act of "drawing up and filing of" the Massengale remonstration and petition for a writ of certiorari "on behalf of another individual" is a crime, stating, "you have held yourself out repeatedly as 'representing' Tamela Grace Massengale, which is indicative of unauthorized practice of law."

98. The attorney general's office, in a form intended to bring reports of unlicensed practice of law, shows that payment for service is an essential element in a UPL action. **EXHIBIT No. 9**, UPL complaint form.

99. Since constitutional protections for right of redress, remonstrance and address in Tenn. const. art. 1, the bill of rights, apply to petitioner, the words used by relator to describe his gratis legal mercy next friend labor are not dispositive, and it is of no significance whether he says he is speaking "with" or "for" Mrs. Massengale given the strength of the underlying right of religion, assembly and redress.

100. "The power of the States to control the practice of law cannot be exercised so as to abrogate federally protected rights" *id.* Johnson at 490. [6]

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[6] Justice Douglas, in concurring opinion in the Tennessee case *id.* Johnson, says laymen are more needed to help defendants and plaintiffs obtain justice.

> But it is becoming abundantly clear that more and more of the effort in ferreting out the basis of claims and the agencies responsible for them and in preparing the almost endless paperwork for their prosecution is work for laymen. There are not enough lawyers to manage or supervise all of these affairs; and much of the basic work done requires no special legal talent. Yet there is a **closed-shop philosophy in the legal profession** that cuts down drastically active roles for laymen. ***
>
> That traditional, **closed-shop attitude** is utterly out of place in the modern world[1] where claims pile high and much of the work of tracing and pursuing them requires the patience and wisdom of a layman rather than the legal skills of a member of the bar. [emphasis added]

101. Assistance is to help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. People v. Hayne, 83 Cal. Ill, 23 Fac. 1, 7 L.R.A.

102. Counsel is a term with broad, generally accepted meaning that includes lawyering and legal counsel and many other activities. Statutory and constitutional provisions are to be understood in their "plain and ordinary meaning. *** [W]here the statutory language is clear, we apply the plain and normal meaning of the words." Commissioners of Powell-Clinch Util. Dist. v. Util. Mgmt. Rev. Bd., 427 S.W.3d 375, 381–82 (Tenn. Ct. App. 2013).

103. Credit repair agencies hire staff to give counsel. Ministers at North Shore Fellowship, where petitioner is member in good standing, give counsel from pulpits and in private sessions. Psychiatrists give counsel. Marriage counselors give wise words. Presidential and kingly advisers give counsel. [7] "Where there is no counsel, the people fall; But in the multitude of counselors there is safety." Proverbs 11:14. "Then they said, 'Come and let us devise plans against Jeremiah; for the law shall not perish from the priest, *nor counsel from the wise*, nor the word from the prophet. Come and let us attack him with the tongue, and let us not give heed to any of his words.'" Jeremiah 18:18.

Today, 55 years after this Tennessee jailhouse lawyer case, the Internet has brought rich abundance of legal means and aids into the hands of *pro ses*, next friends and others seeking to render aid and mercy to distressed poor people and others in exercise of their right to counsel.

[7] "PRIVY counsellors are *made* by the king's nomination, without either patent or grant; and, on taking the necessary oaths, they become immediately privy counsellors during the life of the king that chooses them, but subject to removal at his discretion." William Blackstone, Commentaries on the laws of England, introduction. https://www.gutenberg.org/files/30802/30802-h/30802-h.htm

104. Counsel is not a word exclusive to licensed business owner attorneys giving legal advice and drafting motions and briefs. The state and federal constitutions guarantee every defendant right to counsel of one's choice.

105. It is not an offense nor a sin for a one-eyed man to help a blind man across the street. It's not a crime for a man without medical training to give CPR to a man gagging over a piece of chicken. It is not an offense for a hair stylist at home to give a haircut to a shaggy nephew outside the scope of the Tennessee cosmetology act of 1986 at T.C.A. § 62-4-101. Legal filings, in and of themselves, are not under privilege, but per right of assembly and remonstrance. They become subject to privilege requirements if done for private profit and gain as part of an ongoing enterprise.

Argument

106. Complainant does not approach the board because of mistakes in judgment or a failure to perform duties. If it were possible for complainant to sue respondent under the ouster law, he would set forth with "reasonable certainty," per sect. 113 that respondent Wamp is unfit for office. Removal, however, is in the general assembly's authority alone. Ramsey v. Bd. of prof'l. Responsibility of Sup. Ct of Tenn. 771 S.W. 2d 116 (1989). The board's authority is supervisory, administrative and ameliorative of respondent under her license with its strongest punishment being disbarment.

107. Evidence of official dereliction against four (4) constitutional guarantees is clear and convincing. Respondent's actions are willful misconduct and reckless neglect of the law meriting correction up to suspension.

108. Miss Wamp's motion to censor is a fraud the court, as if the court doesn't know the difference between "the general public" and "a juror," between "disruptive" news coverage under constitutional protection and "disruptive" acts or words during a court proceeding that interfere with running of a trial. It's an intrinsic fraud on the court, coming from inside proceedings because it asks the court to share her offense at news coverage of the Rzeplinski case and to share respondent's willingness to abrogate constitutional guarantees to prevent it.

109. Her motion to the tribunal violates rule 3.3 forbidding false statements of law, as to when juries are constituted, pretending the general public is the same as a jury pool.

110. Her threatening letter to relator is a fraud under color of office, misrepresenting the UPL statute by omitting reference to the valuable consideration in the definitions so that she may make threats and give appearance of having legal grounds in making them and demand a halt to relator's Christian mercy ministry. She intends to abrogate free exercise of religion and relator's rights of conscience by threat of criminal prosecution.

111. The premise of respondent's ire about jury power also is faulty, based on a poor reading of law and the rights of jury members to vote their conscience. Miss Wamp decries jury nullification as an "unlawful idea. *** If jurors have been exposed to this unlawful concept it is a bell that cannot be unrung, and the state may have only one chance at trying his case." She joins the censorship industrial complex run by the U.S. government under party spirit seeking to censor press content dubbed since 2020 "misinformation, "disinformation" and "*malinformation*," as if ideas themselves could be illegal and dangerous, as if censorship is a project the DA dare undertake against widely known law and the rights of the people.

112. The jurisprudence on jury nullification holds no defendant has a right to jury nullification nor jury instructions recognizing it. [8]

113. Cases also indicate jury members' voting their conscience is part of human nature and inescapable, a power of the people no court can outlaw..

114. While judges may not like juries' ruling against law or against facts, the most they can do to limit jury nullification is to forbid lawyers from advocating it in

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> Although it is conceivable that a jury would decline to do so, **such a failure to follow the law is nothing but a windfall to the defendant because he does not enjoy a personal right to jury nullification.**[1] This Court has declined to find that jury nullification is a personal right of the defendant. *See Jerry Lee Craigmire v. State,* No. 03C01–9710–CR–0040, 1999 WL 508445, at *12 (Tenn.Crim.App., at Knoxville, Jul. 20, 1999), *perm app. denied* (Tenn, Nov. 22, 1999). Our state supreme court has said that jury nullification is **neither a personal right of the accused nor of the jury itself, although juries sometimes do nullify applicable law**. *Wright v. State,* 217 Tenn. 85, 394 S.W.2d 883, 885 (Tenn.1965).[2]

State v. St. Clair, No. M2012-00578-CCA-R3CD, 2013 WL 1611206, at *6 (Tenn. Crim. App. Apr. 16, 2013) (emphasis added)

proceedings. [9]

115. Regardless whether respondent's beliefs about jury nullification are correct, her effort to bar the press and close the courts to prevent infection of wrong-think is audacious contumacy and oppression.

116. No court has authority to "suppress *** or censor events which transpire [in public] proceedings," the court says, quoting State v. Montgomery 929 S.W.2d 409, 412, in denying respondent's motion to censor coverage and close the courts.

117. Respondent's analysis of the role of next friend is faulty because it doesn't account for the absolute right of a defendant to have counsel of her choice. The next friend is not limited by judicial analyses on mental defects and such limits making it difficult for an prison inmate to get a third party to serve him legally.

118. If a criminal defendant chooses petitioner to speak with her or for her, there seems no proper way to deny her that right. But the court, using grounds similar to those of respondent, denies the Massengale remonstrance and petition for writ of certiorari drafted by relator. See EXHIBIT No. 4, Order of dismissal as to petition for writ of certiorari.

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> The applicable rule is that, although jurors possess the **raw power to set an accused free for any reason or for no reason**, their duty is to apply the law as given to them by the court. *** *Accordingly, while jurors may choose to flex their muscles, ignoring both law and evidence in a gadarene rush to acquit a criminal defendant,* ***neither the court nor counsel should encourage jurors to exercise this power.*** *** *A trial judge, therefore,* may block *defense attorneys' attempts to serenade a jury with the siren song of nullification* *** ; and, indeed, may instruct the jury on the dimensions of their duty to the exclusion of jury nullification.

United States v. Sepulveda, 15 F.3d 1161, 1189–90 (1st Cir. 1993) (internal citations omitted) (emphases added)

119. Defendant's role is *initiatory*, per right; next friends' is *responsive*. Relator doesn't have a right to ***be*** a next friend. The right under the constitution to ***name*** the next friend is entirely that of defendant. Relator respectfully submits the court has no authority to say, "[T]he Court finds that there is no basis for this Defendant **to be appointed a next friend** absent some showing that she is an infant or otherwise incompetent" (order p.2) (emphasis added).

120. When the defendant's life and right are at stake, no authority exists for a court to "appoint" a next friend or disapprove of a defendant's choice, that right belonging to the accused, who being one of the free people in state of Tennessee should be considered as a member of that body constituting the court and the state itself. Tenn. const. art. 1, sect. 1. [10]

121. Denial of Mrs. Massengale's choice to counsel defeats her unalienable, inherent, God-given and constitutionally guaranteed right that relator defends in court..

122. Respondent in her motion to censor makes statements that verge on, even cross the line into, slander and defamation.

123. She implies petitioner is disposed to criminality. "Tulis also has had his own criminal cases in Hamilton County." This statement is true, but the effect would be less harmful if she would point out her office justly dismissed the case, one arising

[10] The Tennessee bill of rights, sect 1, says the following:

> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

from a false imprisonment and false arrest by a Hamilton County deputy. Respondent allegations of improper conduct with the foreman of the grand jury are made without stating the facts of the matter of why relator was having dealings with the foreman, Jimmy Anderson, which is relator's right, a matter is outside the scope of this complaint.

124. Petitioner is not involved in the unlicensed practice of law which requires valuable compensation for the services rendered. Petitioner is not an attorney, does not practice law, does not have a law business, is not involved in the occupation, calling or trade of pleadings under law. Respondent has no evidence of it being otherwise, and does not directly state he is operating a business.

125. No evidence is presented that his activities as press member under Tenn. const. Art. 1 sect. 19 and promoter of judicial and legal reform is anything other than *gratis* in every court case and an enfleshment and living out of the grace the Lord Jesus Christ shown to all guilty sinners who repent.

126. He has stated many times his press and advocacy work are a diaconal service to the church at large, waiting tables, as it were, looking out for the widows, the alien and stranger, the poor and the oppressed. He is not for hire, nor is given valuable consideration for any act involving any legal filing or sharing of opinion. He makes no personal private profit except Christ's reward for His servants. His acts are protected under the constitutionally guaranteed rights of assembly, remonstrance and religion.

127. Such mercy relationship is evidenced in Mrs. Massengale's assignment affidavit regarding next friend on p. 11 of EXHIBIT No. 4, remonstrance & certiorari filing, Tamela Grace Massengale affidavit [o]n giving David Jonathan Tulis power of attorney, next-friend status.

128. Respondent threatens that his continuing religious free exercise is a crime she will abate under color of law, specifically a criminal prosecution as unlicensed practice of law. T.C.A. § 23-3-101 *et seq.*

129. The federally guaranteed rights petitioner intends to protect are that of the 1st amendment regarding speech, press, assembly and petition, the 14th amendment in its application of the bill of rights upon state of Tennessee, and the U.S. const. art. 4, sect. 4, guarantee as to Tennessee's tripartite form of government with democratic processes. "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion[.]"

130. The four Tennessee constitutional guarantees respondent commits herself to abrogate:

a. ➤ "That all courts shall be open[.]" Art. 1 sect. 17

b. ➤ "That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. 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." Art. 1, sect. 19

c. ➤ "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; *** 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." Art. 1, sect. 3

d. ➤ "That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, *** " to confer, organize, gather, seek advice in mutual defense, in court or anywhere else. The people have a right to approach public servants in executive, legislative and judicial authority, 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." Tenn. const. art. 1, sect. 23

131. If these four areas of state constitutional law have any leaks, art. 11 § 16, gives a sweeping reminder of the subordinate role played by public servants and people in offices of trust. "**Every** thing in the bill of rights *** is **excepted out** of the General powers *** and shall remain **forever inviolate**," it states.

> The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that every thing in the bill of rights contained, is excepted out of the General powers of government, and shall forever remain inviolate.

Tenn. const. art. 11, sect. 16.

132. In her motion to censor, respondent uses her public authority to abrogate constitutional provisions on courts and press. In her letter to complainant she uses threat to abrogate complainant's rights of religion and remonstrance. Abrogating, or using fraud on the court to abrogate, constitutional rights is in violation of rules 3.3 on candor toward the tribunal and 8.4 on misconduct.

133. To say the jury pool is the same as the general public is false. To say next friend status exists only on death row and in service to lunatics or mental incompetents is false. To misrepresent jury nullification as an "unlawful concept" would mislead the court when the jurisprudence accepts the concept as inseparable

from the existence of juries.. To nullify press rights because complainant is "obstructive and disruptive" to her political status respondent falsely equates to disruption of court proceedings. To demand closing the courts misrepresents well known press rights jurisprudence under 1st amendment and Tenn. const. Art. 1 sect. 19. Her grievance that complainant "attempted to influence jurors through his articles," motion p. 5, is uttered in bad faith and malice because the general public and juror are not the same and the press is free. Complainant's joining Mrs. Massengale in remonstrance and petition in the name of the state is not UPL, and to say so is bad faith and a deception against the court. Respondent violates repeatedly rules 3.3 and 8.4.

134. Her motion is an act of oppression, criminally indictable under § 39-16-403.

135. "We hold that the right of petition enshrined in Article 1, Section 23 of the Tennessee Constitution represents the unambiguous public policy of the State of Tennessee that citizens may petition their government." Smith v. Bluecross Blueshield of Tennessee, No. E202201058COAR3CV, 2023 WL 3903385, at *8 (Tenn. Ct. App. June 9, 2023), appeal granted sub nom. Smith v. Blue Cross Blue Shield of Tennessee, No. E202201058SCR11CV, 2023 WL 8183880 (Tenn. Nov. 20, 2023).

136. Relator is not challenging the UPL statute. The law is clear that the practice of law is a privileged activity in business, in commerce, for hire, affecting the public interest, for profit and involving the selling of services, as *id.* Phillips makes clear. He consciously provides his reporting work and mercy ministry in a way to avoid offending this law. He strictly avoids any remuneration for mercy rendered.

137. The courts presume the constitutionality of statutes. "*[E]very word* contained in a statute has both *meaning and purpose* and should therefore be given its full

effect if the General Assembly's obvious intention is not violated in doing so." Doe v. Roe, 638 S.W.3d 614, 617–18 (Tenn. Ct. App. 2021) (emphasis added).

138. If a court determines that petitioner's *religious* and *petitionary* free exercise as next friend to Mrs Massengale or others is forbidden by the unlicensed practice of law statute, he would believe himself obligated to challenge the law's constitutionality.

Relief requested

139. Complainant respectfully demands the following:

a. Fair consideration of his complaint by disciplinary counsel and that it conduct an investigation and, based on the evidence and law herein, recommend "prosecution of formal charges before a hearing panel." Sup.Ct.Rules, Rule 9, § 15.

b. That counsel discern substantial and material evidence in the complaint and thereafter demand process for the board to suspend respondent's privilege to show the board's recognition of the gravity of her actions against petitioner, the law and the public interest.

Respectfully submitted,

David Jonathan Tulis

David Jonathan Tulis

EXHIBITS

David Jonathan Tulis
Complainant

v.

Coty Wamp
District attorney general

Exhibit No. 1 State's motion regarding attempts at jury nullification

Exhibit No. 2 Relator's Objection to motion to censor, demand for sanctions

Exhibit No. 3 Order denying in part and holding in abeyance in part state's motion regarding attempts at jury nullification

Exhibit No. 4 Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for writ of certiorari

Exhibit No. 5 Press report "TRANSCRIPT: Judge threatens police victim 'next friend' as case defies illegal arrest warrants"

Exhibit No. 6 Order of dismissal as to petition for writ of certiorari

Exhibit No. 7 Respondent Wamp May 6, 2024, letter to complainant

Exhibit No. 8 Phillips v. Lewis 3 Shann. Cas. 230 (1877)

Exhibit No. 9 UPL complaint form, attorney general's office

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,	)	
	)	**DIVISION II**
v.	)	
	)	**No. 316374**
RAYMOND RZEPLINSKI,	)	
Defendant,	)	
	)	
	)	

STATE'S MOTION REGARDING ATTEMPTS AT JURY NULLIFICATION

Comes now, the State of Tennessee, by and through its district attorney general, to request that this Honorable Court allow the State to strike potential jurors for cause during voir dire if the potential juror listens to the radio show of David Tulis, has spoken to David Tulis about this case, or reads the blogs of David Tulis. The State additionally requests that David Tulis be barred from entry to the courtroom during the proceedings of this trial as he has demonstrated an attempt to unlawfully intervene or interfere with the proceedings, and he has attempted to inform jurors of the unlawful concept of jury nullification.

I. Background Information

It came to the attention of the State of Tennessee that independent reporter David Tulis, on his blogs titled "Tulis Report," "tntraffic ticket.us," and "davidtulis.substack.com/p/jurors-duty-to-acquit-plumber-ray" posted articles titled "2 women Das, judge, lawyer lay trap for '2A Ray'" and "Jury's duty to acquit Plumber Ray in vicious prosecution." In these articles he speaks at length about the facts in the Defendant's case and his personal views regarding this case.[1] In addition to

[1] David Tulis, *2 women Das, judge, lawyer law trap for '2A Ray'*, TULIS REPORT, July 23, 2024, https://tntrafficticket.us/2024/07/2-women-das-judge-lawyer-lay-trap-for-2a-ray/.

his own views, Mr. Tulis discusses at length jury nullification and impresses upon potential jurors the duty to nullify. Id. *See States Exhibit 1* and *2*.

Mr. Tulis's obstructive and disruptive behavior is not limited to these articles. Mr. Tulis has also recently attempted to intervene and illegally practice law through the filing of motions and representation of a client in a General Sessions Court case before Judge Ables against Tamela Grace Massengale. Mr. Tulis was warned against the unlawful practice of law, and his motions were dismissed by Judge Ables and by this Court. *See States Exhibit 3*. Mr. Tulis has also had his own criminal cases in Hamilton County. While the charges were pending grand jury review, Mr. Tulis attempted numerous times to directly contact, get ahold of, or deceive his way into the grand jury room to speak with the foreperson of the grand jury directly. At one point he identified himself as a reporter curious about how the grand jury operated, not disclosing that he had a case pending the grand jury and attempted to gain direct access to them. He was unsuccessful in this attempt when court security intervened.

As is shown above, Mr. Tulis has a history of operating outside the lines of what is proper and lawful. He actively intervenes in cases in which he is interested, and he has directly attempted to tamper with and taint the potential jurors for the Defendant's case.

II. THE LAW REGARDING JURY NULLIFICATION

Tennessee Courts have routinely ruled that a Defendant does not have a right, whether it be constitutional or procedural, to jury nullification. *Hill v. State*, No. W2013-02557-CCA-R3-PC, 2015 Tenn. Crim. App. LEXIS 86, *25. Tennessee has also ruled that a defendant and his or her counsel is prohibited from encouraging jury nullification. *See State v. Shropshire*, 874 S.W.2d 634, 640 (Tenn. Crim. App. 1993). When such arguments arise, courts act properly when they stop such arguments from being made and prospectively prohibit such arguments from being made

through instruction to the defendant and his or her attorney. *See Craigmire v. State*, C.C.A. No. 03C01-9710-CR-00440, 1999 Tenn. Crim. App. LEXIS 727, *13. When jury nullification is raised to jurors, a trial court acts properly in issuing an instruction to jurors that they must make their judgment based on whether the elements of the crime were proved beyond a reasonable doubt and not based on their personal views of the whether the law is valid. *See Craigmire*, 1999 Tenn. Crim. App. LEXIS 727, *48-49 (citing *Farina v. United States*, 622 A.2d 50, 61 (D.C. Ct. App. 1993)). Although a jury might make a decision based on nullification, they have no right to do so. *Wright v. State*, 394 S.W.2d 883, 885 (Tenn. 1965).

III. THE LAW REGARDING STRIKING OR CHALLENGING JURORS FOR CAUSE

During the questioning of jurors, the parties are permitted to ask questions to discover bases for challenges for cause. Tenn. R. Crim. P. 24(b)(1). Challenges for cause area not counted against the allotted peremptory challenges for the parties. A juror may be excused for cause if (1) there exists any ground for challenge for cause provided by law or (B) if the prospective juror has been exposed to potentially prejudicial information that makes them unacceptable as a juror. *Id.* at (c)(2)(A)-(B).

IV. THE LAW REGARDING REMOVAL OF A PERSON FROM COURT PROCEEDINGS

Mr. Tulis works as an independent reporter and blogger and falls under the definition of "media" for the purpose of the media guidelines articulated by Tennessee Supreme Court Rule 30. "Media" is defined in this rule as "legitimate news gathering and reporting agencies and their representative whose function is to inform the public, or persons engaged in the preparation of educational films or recordings." *Id.* Media coverage of judicial proceedings is generally to be allowed so long as the coverage is subject to the authority of the presiding judge to: (1) control the conduct of the proceedings before the court; (2) maintain decorum and prevent distractions; (3)

guarantee the safety of any party, witness, or juror, and (4) ensure the fair and impartial administration of justice in the pending case. *Id.*

The presiding judge is authorized to refuse, limit, terminate, or temporarily suspend media coverage of an entire case or portions thereof in order to maintain the above-listed principles. *Id.* at (D)(1). While these rules are typically applied to televised coverage, they are instructive for disruptive members of the public or journalists or reporters attending without a camera for the purpose of taking notes.

V. STATE'S ARGUMENTS AND REQUESTS

A. State's Request to Allow Challenges for Cause if a Prospective Juror is a Reader of Mr. Tulis's Blogs, has spoken to David Tulis about this case, or is a Listener to His Radio Show

The State requests that this Court allow the State during voir dire to inquire as to whether prospective jurors are readers of Mr. Tulis's blog, if they have talked with him about this case, or if they are listeners of his radio show. If there are such persons, the State requests that this Court allow the State to challenge their service on the jury for cause and not through a peremptory challenge. A juror that has been exposed to Mr. Tulis's opinions regarding jury nullification is a juror that has been tainted by exposure to an unlawful doctrine, and unfairly prejudices them and makes them unacceptable as a juror. This is also not something that can be remedied solely through an instruction. The State is entitled to a fair trial of the proof and the law. If jurors have been exposed to this unlawful concept it is a bell that cannot be unrung, and the State may only have one chance at trying its case.

B. *State's Request that Mr. Tulis be Barred from the Courtroom or Courthouse*

The State recognizes that trials are open to the public for viewing, and that reporters may have additional rights to be present. However, the law also allows the Court to remove people from

a courtroom who have become disruptive or obstruct the process, including the Defendant. *See Rule 43(b)(2) Tennessee Rules of Criminal Procedure.* Should media become disruptive towards the proceedings or worse, attempt to interfere with the proceedings, they should be removed pursuant to Tennessee Supreme Court Rule 30. Mr. Tulis has already attempted to influence potential jurors through his articles. He has shown through a pattern of behavior that he is obstructive and will not follow the law. Pursuant to this rule, the State is requesting that this Court bar Mr. Tulis from the courthouse until the trial has concluded and the jury is released from service. While this may seem drastic, the State believes it necessary to preserve a fair trial for both parties.

C. State's Request for a Prepared Instruction Against Jury Nullification

If it becomes apparent during trial that the jury has been exposed to the idea of jury nullification, from any source, the State requests this Court issue an instruction to the jury in accordance with *Craigmire*. *See Craigmire*, 1999 Tenn. Crim. App. LEXIS 727, *48-49. This instruction should instruct the jury that they are to make their determination on whether the elements of the charges have been proved beyond a reasonable doubt and not on their personal beliefs regarding the validity of the law.

VI. CONCLUSION

For the foregoing reasons, the State requests that this Honorable Court allow the State to strike potential jurors for cause during voir dire if the potential juror listens to the radio show of David Tulis, has spoken to David Tulis about this case, or reads the blogs of David Tulis. Further, the State requests that should this jury be exposed to the idea of jury nullification, this Court issue an instruction to prevent consideration of this improper and unlawful means of considering guilt or innocence. Lastly, the State requests that Mr. Tulis interfere be barred from the courthouse until the jury is released from service.

This the 25th day of July, 2024.

Respectfully submitted,

COTY WAMP
DISTRICT ATTORNEY GENERAL

By:

Nicole Evans
Assistant District Attorney General
State Bar No. 038697
Nicole.Evans@hcdatn.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing State's Motion Regarding Attempts at Jury Nullification, has been provided to, attorney for the defendant, Ben McGowan, by electronic mail on 25th day of July, 2024 and a copy put in the U.S. Mail.

Nicole Evans
Assistant District Attorney General
Nicole.Evans@hcdatn.org

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENN.

State of Tennessee *ex rel.* David Jonathan Tulis)
% 10520 Brickhill Lane, Soddy-Daisy 37379)
(423) 316-2680 davidtuliseditor@gmail.com)
Relator)

V.) Judge Amanda Dunn

COTY WAMP) **Oral argument demand**
District attorney)
Respondent)

Objection to motion to censor, demand for sanctions

Comes now State of Tennessee, on relation of press member petitioner, to object to respondent's motion to close the courts in Tennessee and to obstruct federally protected press, speech and assembly rights of relator and other citizens in like station.

The criminal trial of Ray Rzeplinski starts Monday. Petitioner is covering it under Tenn. const. Art. 1, sect. 19, and the U.S. first amendment protecting free speech and press.

Without serving a copy to petitioner, she requests the court bar him from the courtroom. She claims his free communication of thoughts and opinions is poisoning the jury pool as he speaks for the right of jury members to vote their consciences and nullify any corrupt prosecution by a "Not guilty" finding of fact and law. The supreme law that recognizes their God-given, unalienable, inherent and constitutionally protected right to enjoy a free press declares, in its last sentence, they "shall have a right to determine [in a libel trial] **the law and the facts**, under the direction of the court, ***as in other criminal cases.***" [1]

[1] Section 19. That the printing press shall be **free to every person** to examine **the proceedings** of the Legislature; or of **any branch or officer** of the government, and no law shall ever be made to restrain the right thereof. 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. But in prosecutions for the publication of papers investigating the official conduct of officers, or

Relator and all members of the citizenry have a right to open courts. Tenn. const. Art. 1, sect. 17 says "That all courts shall be open" for public review of their doings. The printing press is "free to every person" who may examine "the proceedings *** of any branch or officer of the government," and "no law shall ever be made to restrain the right thereof." To enjoy this right, the people of Tennessee and the state itself at their service must have open courts. Tenn. const. Art. 11, sect. 16, doubly secures these rights. [2]

Only if relator or other citizen approaches a jury member so identified to make an argument about the case would there be cause for alarm about jury tampering. The use of radio, blog or other media to broadcast facts and opinion do not rise to such level of interaction.

Given the foregoing, State of Tennessee on relation demands (1) the court deny the district attorney's motion, and (2) that it sanction her abuse of office in seeking to censor relator and deprive the public of a free press and an open courtroom.

Respectfully submitted,

David Jonathan Tulis, relator

State of Tennessee, *ex rel.* David Jonathan Tulis

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men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have **a right to determine the law and the facts, under the direction of the court, as in other criminal cases**. [Emphasis added]

[2] Art. 11, sect. 16. The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and **shall never be violated** on **any pretense whatever**. And to guard against transgression of the high powers we have delegated, we declare that **everything** in the bill of rights contained, is **excepted out of the general powers** of the government, and shall **forever remain inviolate**.

CERTIFICATE OF SERVICE

I hereby certify that I have sent respondent district attorney Coty Wamp a copy of this motion either by email at coty.Wamp@hcdatn.org or by personal delivery to her office at 600 Market St. Suite 310, Chattanooga, TN 37402 on Friday, the 26th day of July, 2024.

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENN.

State of Tennessee *ex rel.* David Jonathan Tulis)
% 10520 Brickhill Lane, Soddy-Daisy 37379)
(423) 316-2680 davidtuliseditor@gmail.com)
Relator)
V.)
)
COTY WAMP)
District attorney)
Respondent)

Judge Amanda Dunn

Oral argument demand

Brief in support of objection to censor, demand for sanctions

Comes now State of Tennessee, on relation, to bring to better order the district attorney general, the holder of which office seeks to muzzle the press on the theory that "disruptive" news and editorializing before the general public necessarily implies that the journalist cannot be counted on obeying Rule 30 media guidelines.

In attempting to close the courts and muzzle the press, respondent Wamp alleges petitioner has "a history of operating outside the lines of what is proper and lawful" (p. 2). In promoting constitutional rights (as he sees it) via mass media, "he has demonstrated an attempt to unlawfully intervene or interfere with the proceedings, and he has attempted to inform jurors of the unlawful concept of jury nullification" (p. 1). "Mr. Tulis has already attempted to influence potential jurors through his articles. He has shown through a pattern of behavior that he is obstructive and will not follow the law" (p. 5). "[H]e directly attempted to tamper with and taint the potential jurors for the Defendant's case" (p. 2).

Respondent is angry at the constitutional right of jury power that every member of the Rzeplinski jury has, regardless of court opinions respondent cites showing the courts

limit *attorneys* in making any suggestion of jury power in a trial. The citizenry has nullification power and no one can stop it or remove the operation of conscience that underlies the act of negating a bogus prosecution.

Reporting content is in no way subject to respondent's authority, nor the court's under Tenn. const. Art. 1, sect. 17, and the U.S. 1st amendment. That includes the bias, slant, rhetoric, proofs, details, repetition, editorializing, crusading the journalist or publisher exhibits. So long he libels no one nor incites violence with his words, he remains out of the court's purview.

The court has authority not of coverage, but has what happens in its auditorium. The court has "control [of] the conduct of the proceedings" and a duty to "maintain decorum and prevent distractions." Obviously, deputies "guarantee the safety of any party, witness, or juror," all so the court can "ensure the fair and impartial administration of justice" (Rule 30(a)(1).

Proposed ban unlawful

Respondent's proposal to censor Rzeplinski case coverage by banning relator's person is disturbing. The Wamp thesis wants the court to make a leap from negative, disruptive coverage to his being a "disruptive" man in his personal presentation.

1. Respondent speaks presumptively about relator's attendance at trial as a media member under Rule 30. Relator may attend the proceedings as member of the public, with pen and paper. Relator is subject to the media rules if he intends to use laptop, camera, audio recorder during proceedings. To do so, the rules say he must ask the judge's permission at least two days in advance. "'*Coverage*' means any recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment." (Rule 30B(1)). As of Thursday, petitioner made no request to become eligible for Rule 30 privileges and duties.

2. Respondent Wamp states no grounds upon which the court may find he will likely cause an uproar, affray, disturbance or riot during the Rzeplinski trial. The court generally assumes every member of a trial audience is going to proper, quiet, respectful and attentive — until shown wrong by disruptive acts. Bailiffs stand by to remove any obstreperous audience member. Presumptions about relator's demeanor, civility, character and person in a Hamilton County courtroom are merely that — presumptions that relator herein rebuts.

   He assures the court that as member of the general public witnessing the Rzeplinski trial, or any other, he will do all in his power to respect the court's authority upon parties subject to Rule 30.

3. Respondent argues against the free press jurisprudence in the United States. "[A] trial courtroom also is a public place where the people generally — and representatives of the media — have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place. *** We hold that the right to attend criminal trials[17] is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated" Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 578, 580, 100 S. Ct. 2814, 2829, 65 L. Ed. 2d 973 (1980).

4. Respondent allegations about respondent's judicial reform and anti-corruption labors as press member and practicing Christian border on slander. Relator asks the court not to hear the accusations against relator in the dark spirit by which they are intended. To demand a reporter be banned for negative coverage violates Rule 8. Rules of Professional Conduct, specifically, Rule 3.3, candor toward the tribunal and seeming "false statement[s] of fact or law" regarding relator or pretending

published reports constitute grounds for closing to court against that lifetime professional journalist.

Relief requested

Petitioner asks the court to:

(1) Uphold the rights of the public generally to attend criminal trials, as the courts are open

(2) Deny respondent's motion as it pertains to relator's protected state and federal interests to attend the trial as a member of the general public

and, finally, to

(3) Hear and grant relator's request to use his laptop, phone as camera, and phone as audio recorder, in the coming proceedings, pursuant to Rule 30, with which petitioner is familiar.

Respectfully submitted,

David Jonathan Tulis, relator

State of Tennessee *ex rel.*
David Jonathan Tulis

CERTIFICATE OF SERVICE

I hereby certify that I have sent respondent district attorney Coty Wamp a copy of this motion either by email at coty.Wamp@hcdatn.org or by personal delivery to her office at 600 Market St. Suite 310, Chattanooga, TN 37402 on Friday, the 26th day of July, 2024.

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,	)	
	)	
Plaintiff,	)	SECOND DIVISION
	)	
vs.	)	
	)	NO(s). 316374
RAYMOND RZEPLINSKI,	)	
	)	
Defendant.	)	

ORDER DENYING IN PART AND HOLDING IN ABEYANCE IN PART STATE'S MOTION REGARDING ATTEMPTS AT JURY NULLIFICATION

This matter is before the Court upon the written request of the State relevant to statements made by David Tulis, a local member of the press who maintains a blog and radio show that is broadcast on NoogaRadio. The motion has been in made in advance of the jury trial in this matter, which is scheduled to begin on July 30, 2024. In its motion, the State makes three specific requests: (1) that the State be allowed to challenge for cause any potential juror who listens to Mr. Tulis, reads his blogs, or has spoken with him about the case; (2) that Mr. Tulis be barred from the courtroom and/or the courthouse during the trial of this matter; and (3) that a jury instruction be given regarding jury nullification if it becomes apparent that a juror has been exposed to such an idea.

The Court will first address the State's request to bar Mr. Tulis from the courtroom. It has long been established that events that occur in a public courtroom constitute public property. State v. Montgomery, 929 S.W.2d 409, 412 (Tenn.Crim.App. 1996), *citing* Craig v. Harney, 331 U.S. 367, 374 (1947). Equally well-established is the principle that a court does not have special rights "which enables it, as distinguished from other institutions of democratic government, to suppress ... or censor events which transpire [in public] proceedings before it." Craig, 331 U.S. at 374. When there is an open, public trial, the media has an absolute right to publish any information that is disseminated during the course of the trial. Montgomery, 929 S.W.2d at 412.[1]

While the media is entitled to make reports about events happening inside the courtroom, this right is not entirely without limits. As noted in the State's motion, *Rule 30* of the *Tennessee Supreme Court Rules*, coverage of a trial is subject to the authority of the presiding judge to: (1)

[1] *See also* Oklahoma Publishing Co. v. District Court, 430 U.S. 308, 97 S.Ct. 1045, 51 L.Ed.2d 355 (1977); Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

Filed Electronically by the Second Division on ***Monday, July 29, 2024***

control the conduct of the proceedings before the court; (2) maintain decorum and prevent distractions; (3) guarantee the safety of any party, witness, or juror, and (4) ensure the fair and impartial administration of justice in the pending case. In addition, media coverage is specifically prohibited as to both jury selection and the identities of jurors. *Tenn. R. S.Ct. 30(C)(2)-(3)* (2023).

As the Court reads the multitudes of state and federal cases addressing the right of the media to be present in the courtroom, it is apparent that a prohibition on reporting what takes place inside a courtroom constitutes a prior restraint in violation of the First Amendment to the United States Constitution. Courtrooms must remain open to the media, even if the reporting may be biased or potentially unfair to one party or the other, in order to ensure that constitutional rights to a public trial and freedom of the process are honored.

The Court respectfully disagrees with the State that Mr. Tulis's use of his media platforms to promote jury nullification in this case constitutes improper influence of a juror. *See Tenn. Code Ann. § 39-16-509(a)* (defining the offense of improper influence of a juror as privately communicating with a juror with the intent to influence the outcome of the proceedings on the basis of considerations other than those authorized by law).

Mr. Tulis has appeared in the Second Division of Criminal Court on more than one occasion. To date, he has never disrupted a court proceeding and the Court expects he will continue to maintain decorum during the trial in question. As a member of the media, Mr. Tulis has a right to report the events of the trial, and therefore the Court declines to prevent him from attending trial in this case.

This ruling does not diminish the Court's authority to control the proceedings and ensure the impartial administration of justice. Accordingly, if there are any efforts made by any individual to personally speak with a potential juror or otherwise influence the jury panel in this case, the Court will issue an order to prevent further conduct, potentially including criminal contempt.

As to remainder of the State's motion, the Court will hold its requests in abeyance and will address each of them as the need arises. After the jury venire is sworn in this case, the Court will inquire of all potential jurors as to whether they are familiar with the parties, the attorneys, or the facts of the case. Specific inquiry will also be made as to whether the potential jurors were made aware of any media reporting in this case. Based upon the responses given, the parties may make a motion to strike for cause once that potential juror is called into the box for questioning.

Likewise, the Court will continue in its practice of admonishing all potential jurors to avoid media reporting on this case. The jury selected by the parties will also receive an instruction each time court is adjourned instructing them not to speak with any individual, including their fellow

Filed Electronically by the Second Division on ***Monday, July 29, 2024***

jurors, and to avoid all media reporting relating to the case at issue until the case is finally decided. The parties can request further instructions during the charge conference at the conclusion of proof.

Therefore, the State's request to prohibit Mr. Tulis from the courtroom is **DENIED**. All other requests in the State's motion are **HELD IN ABEYANCE.**

It is so ordered.

Enter:

AMANDA B. DUNN, Judge

Filed Electronically by the Second Division on ***Monday, July 29, 2024***

In the Criminal Court of Hamilton County, Tennessee

State of Tennessee	)	
	)	
vs.	)	**Case nos.**
	)	1941912
Tamela Grace Massengale	)	Theft under $500
1337 Ely Road, Apt. B	)	1941913
Chattanooga, TN 37343	)	Harassment
In *persona propria*	)	
	)	
NEXT FRIEND	)	
David Jonathan Tulis	)	
% 10520 Brickhill Lane	)	
Soddy-Daisy TN 37379	)	
Tel (423) 316-2680	)	
davidtuliseditor@gmail.com	)	

Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for writ of certiorari

I, David Jonathan Tulis, next friend of defendant Tamela Grace Massengale, swears as true the facts and law, as follows, to the best of his ability and knowledge, addressing the court in the matter of Mrs. Massengale's false imprisonment and false arrest under an arrest warrant policy that is a violation of state law for which petitioners demand overthrow by **permanent injunction** to prevent irreparable further harm to Mrs. Massengale and to all others in like station, as follows.

1. The policy of Hamilton County chief magistrate Lorrie Miller forbids fact witness and victim testimony before a magistrate in the creation of an arrest warrant.

2. This policy recognizes that hearsay evidence may be used as basis of an arrest, if that alone is available. T.C.A. § 40-6-204 ("The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part, provide, however, that there is a substantial basis or believing the source of the hearsay to be credible *** ." [1]

3. But policy excludes fact evidence from victims and witnesses, and allows operation of the "examination" function only upon the deputy or police officer, who in instant case has hearsay evidence only and who did not conduct an investigation.

4. Investigation implies inquiries of all witnesses and interested parties to a dispute.

5. City officer Brandi Siler, No. 1156, heard one side of the controversy by telephone, making no contact with Mrs. Massengale before drafting and swearing an arrest warrant March 26, 2024, before magistrate Blake Murchison.

6. It appears the duty of examination obtains slight, if any, obedience from Magistrate Murchison to filter out from the hearsay affiant officer Siler the fact that has only one side of the dispute, and no first-hand knowledge.

---

[1] The section is full states:

> (a) If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is probable cause to believe the defendant has committed it, then the magistrate shall issue an arrest warrant. The finding of probable cause shall be based on evidence, which **may be hearsay** in whole or in part; provided, however, that there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

Tenn. Code Ann. § 40-6-205

7. The chief magistrate of Hamilton County, Lorrie Miller forbids victims and fact witnesses from coming before the magistrate to swear out an arrest warrant and to face examination before obtaining the warrant.

8. Examination of a victim, fact witness or accuser is the means by which Tennessee's good and honorable justice system, in the public interest, excludes liars, troublemakers, frauds and provocateurs from creating false criminal cases by petition to the magistrate.

9. The affidavit used to arrest Mrs. Massengale imposes a due process rights violation against her that is fatal to the state's cause.

10. The Miller policy is illegal, unconstitutional, a breach of office and a violation of her oath and terms of employment with Hamilton County.

History of policy violation

11. Mrs. Massengale next friend David Jonathan Tulis, an investigative radio journalist, in December 2023 apprised Magistrate Miller of the law's grievance against her policy. He has informed the Hamilton County commission. He has sent criminal court judges Boyd Patterson, Barry Steelman and, if he remembers correctly, Amanda Dunn a restatement and analysis of the law.

12. Judge Patterson in public statement to Tulis says says the court will address any breaches of law as alleged if its judicial authority is invoked by a case.

13. The Lorrie Miller policy giving rise to false imprisonment and false arrest in this case makes the policy ripe for adjudication as a matter of law so the people of

Hamilton County might find relief from official misconduct and official oppression pursuant to Tenn. Code Ann. §§ § 39-16-402 and 403 and other law.

14. State of Tennessee v. Tamela Grace Massengale invokes the court's judicial and administrative powers overseeing justice in Hamilton County to provide judicial or administrative corrective, subject to the Tennessee supreme court, the ultimate arbiter under the Tennessee constitution of the rules of judicial proceedings.

Petition for writ of certiorari

15. This remonstrance demands the criminal court issue a writ of certiorari to have the case removed from general sessions court into a court of record.

16. The power for certiorari is recognized in circuit and chancery courts vis a vis their lesser brethren, general sessions courts.

> (a) The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, supported by oath or affirmation.

27-8-104. Power of circuit and chancery courts

17. The law places the ancient certiorari powers in the constitution.

> The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

27-8-101. Constitutional basis

> (a) Certiorari lies:
> 1. On suggestion of diminution;
> 2. Where no appeal is given;

3. As a substitute for appeal;
4. Instead of audita querela; or
5. Instead of writ of error.

(b) This section does not apply to actions governed by the Tennessee Rules of Appellate Procedure.

27-8-102. Cases in which writ lies

18. Certiorari "is used only in those cases in which a compelling public necessity or other unusual circumstances make the ordinary modes of proceeding inadequate, and review thus occasioned is limited to keeping an inferior tribunal within the limits of its jurisdiction and ensuring that such jurisdiction is exercised with regularity" *AmJur*, certiorari § 2. Nature and purpose of writ, generally. Certiorari is an extraordinary, remedial, revisory, supervisory and prerogative writ from a superior court to an inferior directing transmission of the record for review. It is in the nature of a writ of error or an appeal. *AmJur*, certiorari § 4. Statutory writ of review; distinction as to jurisdictional purpose. Certiorari issues in the court's discretion, and only where to do otherwise would result in substantial injustice.

19. The writ issues when there is a want of jurisdiction in the venue below. The want of a constitutional and legal arrest warrant gives Hamilton County sessions court no subject matter jurisdiction over Tamela Grace Massengale and the allegations against her.

20. Petitioners ask the court to remove the case prior to sessions dismissing it so that it will have before it a live case, with the parties having proper standing to give the court subject matter jurisdiction upon the due process controversy provoked by magistrate Miller's handling of her office.

21. Mrs. Massengale is in a $400 dispute over a March 19, 2024, deposit made by complainant Regina Lawton of Murfreesboro, Tenn., for purchase of an $800

Great Dane dog. Mrs. Massengale says deposits are nonrefundable unless such condition is put in writing, which in this case no writing was agreed on by the parties.

22. The matter over refunds and the dispute between Mrs. Massengale and the would-be buyer Lawton is best settled privately or in general sessions court, civil division. "[A]ll courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay." Tenn. const. Art 1, sect. 17.

23. Though the certiorari statute at § 27-8-104 says lower courts "have the power, in **all civil cases**, to issue writs of certiorari," that should not be seen as limiting this cause. City officer Siler's police power exercise and intervention, apart from any sworn writing by the accuser Mrs. Lawton, sidetracked a civil case into criminal jurisdiction, unlawfully and in violation of the arrest warrants law.

24. Petitioners refer the court to the exhibits. They record efforts by next friend Tulis to get Mrs. Miller to reverse her policy, which includes extensive press coverage on NoogaRadio Network, TNtrafficticket.US and also at his page on Substack.com (davidtulis@substack.com), all constituting public notice to the public servant of public injury and grievance demanding immediate redress.

25. Magistrate Miller refuses to meet with petitioner Tulis, refuses to respond to his published study regarding her duties in arrest warrants policy, and refuses to indicate how she is making amends to cease and desist from wrongdoing under the law.

Relief demand

26. Petitioners demand the court:

a. Lift the criminal case pending in general sessions, take jurisdiction over the substance of the case, and ministerially dismiss it as a nullity and void because of violations of due process;

b. Act forthwith, if not sooner, to direct the head judicial commissioner in Hamilton County and her subjects to comply with constitutional provisions and state law at Tenn. Code Ann. § 40, chapter 6, in issuing arrest warrants, and;

c. Review thoroughly the arrest warrant problem, given such extensive public notoriety, issue a written injunction upon the Hamilton County magistrate's office outlining the law and its duty under it, which writing will give continuing guidance to that office and future holders of it, and provide a public record of its duties for the public benefit and in the public interest.

Further affiant sayeth naught.

David Jonathan Tulis

David Jonathan Tulis

STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that David Jonathan Tulis personally appeared before me on the 25 day of April 2024, and signed this affidavit as his free and voluntary act and deed.

Daydell B. Luster

Notary Public

12/14/26

My commission expires

DANYELL B LUSTER
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY

I thank the Court for its Consideration
Tamala Grace Massengale

EXHIBITS

1. Tamela Grace Massengale affidavit on false imprisonment, false arrest arising under hearsay warrant, 2pp
2. Massengale affidavit naming David J. Tulis next friend, 1 page
3. Affidavit of complaint by city policewoman Brandi Siler, county magistrate Blake Murchison, 1 page
4. Incident report, Chattanooga police department, 2pp
5. Additional narrative, Chattanooga police department, 1 page
   5.1 Appearance bonds, 2pp
6. David Tulis letter to Lorrie Miller outlining law's requirements, demanding meeting, 7pp, served via email
7. David Tulis complaint letter to Hamilton County commission, 2pp
8. Email exchange between Lorrie Miller and reporter David Tulis to review policy, 8pp
9. Photo of Tamela Grace Massengale and Shameca Burt, victims of policy

CERTIFICATE OF SERVICE

I, David Tulis, certify that I make service this 25th day of April, 2024, to the following parties in the matter State of Tennessee v. Tamela Grace Massengale:

1. Lorrie Miller, chief magistrate of Hamilton County, via email delivery at LorrieM@hamiltontn.gov
2. Coty Wamp, district attorney, via email service at Coty.Wamp@hcdatn.org
3. Clerk, sessions court, in person filing of notice of this petition to the court

Tamela Grace Massengale affidavit

On false imprisonment, false arrest arising under hearsay warrant

I, Tamela Grace Massengale, being of sound mind and body, testify that I am a resident of Hamilton County, Tenn., and live at 1337 Ely Road, Apt. B, Chattanooga, 37343. I declare the following to be true, to the best of my knowledge ability.

1. This account describes my arrest by Chattanooga Police Dept. on March 27, 2024, based on an arrest warrant sworn by CPD officer Brandy Siler in a county policy in which purported crime victims testify wrongs done them without personally testifying before a magistrate under examination and under oath.
2. The harm done to me is 14 hours at Silverdale county jail, $259 to get seven dogs back, loss after a "traffic stop" of my 2000 Mitsubishi Montero Sport to the towing company, and what appears to be a gross violation of my due process rights to be arrested only under victim or fact witness testimony, and not under warrant based on hearsay.
3. Affiant is 60, unemployed, a divorcee and a widow who lives alone, draws social security administration payments for a permanent disability from a 2018 accident.
4. The March 27, 2024, arrest arises from a police affidavit of complaint, docket no. 1941912, sworn by city employee officer Brandi Siler based on a phone conversation between Ofcr. Siler and Regina Lawton of Murfreesboro, Tenn.
5. Affiant and Mrs. Lawton began discussions of a sale roughly March 1, 2024.
6. The agreement for an $800 sale included a $400 deposit.
7. Mrs. Lawton made March 15, 2024, deposit of $100 via Venmo.
8. On March 19, 2024, affiant requested the $300 balance, and Mrs. Lawton sent $300 in two installments, completing the deposit.
9. Text message records indicate the same day, March 19, Mrs. Lawton demanded cancellation and return of her funds.
10. As noted in the affidavit of complaint, Mrs. Lawton spoke with Ofcr. Siler to claim she was a crime victim.

11. Text messages indicate affiant indicated willingness to refund the whole amount, once the money clearned, and not until April 1 when her $749 social security disability payment comes in.

12. According Ofcr. Siler, Mrs. Lawton is a crime victim, the alleged offense characterized as "false pretenses/swindle/confidence game" in the CPD incident report.

13. Ofcr. Siler made no effort to contact affiant to get her facts in the dispute.

14. Ofcr. Siler took Mrs. Lawton's allegations and obtained an arrest warrant from Hamilton County magistrate Blake Murchison on March 26, 2024.

15. County deputies arrested affiant March 27, 2024, in a "traffic stop." She was cuffed, put into a cruiser, taken to Silverdale, booked on charges of harassment and theft under $500.

16. She paid a bondsman $150 for a bond fee.

17. Affiant was in the jail from 7 p.m. March 27, a Wednesday, to 9:30 a.m. Thursday.

18. Affiant estimates financial losses to her are (1) $3,000 in loss of car, loss of fees paid for the dogs, vet bills, taxi fares, and (2) interruption of her private vocation of caring for and raising dogs, (3) the humiliation, degradation and harm of a false imprisonment and false arrest.

Further affiant sayeth naught.

Tamela Grace Massengale

Tamela Grace Massengale

STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that Tamela Grace Massengale personally appeared before me on the 22nd day of April 2024, and signed this affidavit as his free and voluntary act and deed.

Charlotte G. Olson

Notary Public

My commission expires 07/07/2024

My commission expires

CHARLOTTE G OLSON
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY

Tamela Grace Massengale affidavit

On giving David Jonathan Tulis power of attorney, next-friend status

I, Tamela Grace Massengale, being of sound mind and body, testify that I am a resident of Hamilton County, Tenn., and live at 1337 Ely Road, Apt. B, Chattanooga, 37343. I declare the following to be true, to the best of my knowledge ability.

1. I name David Jonathan Tulis as my next friend in the criminal matter against me.
2. Affiant has an absolute right to name another person as next friend, counsel and to speak on her behalf, with her and for her in any public proceeding in the criminal case against me.
3. He makes no representations of being a lawyer or an attorney, of running a law office or a law business, of having license to practice law, of having any knowledge of law sufficient to give legal advice.
4. He represents his service to me as that of a Chrisian man extending acts of mercy and grace to me and on my behalf.
5. Affiant demands all service in this matter be directed to him, as he has full power of attorney, gladly given, in resolving wrong done to affiant.

Further affiant sayeth naught.

Tamela Grace Massengale

Tamela Grace Massengale

STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that Tamela Grace Massengale personally appeared before me on the 22nd day of April 2024, and signed this affidavit as his free and voluntary act and deed.

Charlotte G. Olson

Notary Public

My commission expires 07/07/2024

My commission expires

CHARLOTTE G OLSON
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY

EXHIBITS

State v. Tamela Grace Massengale

Petition of writ of certiorari

State of Tennessee

AFFIDAVIT OF COMPLAINT

Docket 1941912

Exhibit 3

IN THE GENERAL SESSIONS COURT OF HAMILTON COUNTY

STATE OF TENNESSEE VS MASSENGALE MCGHEE TAMELA GRACE

1 E 11TH ST APT 319

CHATTANOOGA, TN 37402

The undersigned affiant, after being duty sworn according to the law, state that MASSENGALE MCGHEE, TAMELA GRACE whose name is otherwise unknown to the affiant, committed the offense of THEFT UNDER $500 in the above county on or about 3/19/2024

Further, affiant makes oath that the essential facts constituting said offense, the sources of affiant's information, and the reasons why his / her information is believable concerning said facts are as follows:

On 03/19/2024 at 23 12 hours Officer Siler #1156 responded to a False Pretenses/Swindle/Confidence Game and Harassment at 1337 Ely Rd Officer Siler made contact with Regina Lawton (W/F) via phone Ms Lawton found an advertisement for great Dane puppies and responded. Ms Lawton is looking for a puppy to train as her medical assistance dog Ms Lawton contacted Tamela Massengale (W/F) and sent $100 for a deposit. Today Ms Massengale sent messages asking for $200 to help feed the puppies Ms. Lawton was not willing to send the money until Ms Massengale coerced her by saying the puppies are going to die Ms Massengale was upset and frantic when Venmo would not release the money from Ms Lawton Ms. Massengale contacted Venmo with Ms Lawton on the line so the money would be released. In the meantime, Ms Lawton sent another $100 to Ms Massengale Ms Lawton said she just wanted all of her money back and did not want a dog Ms Massengale said she would never get a dog from her and forget the money she will never see it Ms Massengale said "I killed my husband and got away with it You don't think I can do it again?" Ms Massengale kept saying she knows where Ms Lawton lives after the call with Venmo since they confirmed her address and payment information over the phone Ms Massengale continues with the threatening messages. Ms Lawton would like to see charges on Ms. Massengale for the false pretenses and harassment. Nothing further at this time.

If the defendant's charge is dismissed, a no true bill is returned by a grand jury the defendant is arrested and released without being charged with an offense, or the court enters a nolle prosequi in the defendant's case, the defendant is entitled upon petition by the defendant to the court having jurisdiction over the action, to the removal and destruction of all public records relating to the case without cost to the defendant.

Affiant-Name and Address

Officer SILER, BRANDI

B. Siler #1156

Sworn to and subscribed before me this

3/26/2024

Blake D Mundelein

Judge -Court of General Sessions

Vince Dean, Clerk Criminal Division
General Sessions Court

By _____

Deputy Clerk

Exhibit 4

☐ SEXUAL ASSAULT OFFENSE INCIDENT LEVEL ☐ MULTI AGENCY ☐ JUVENILE

INCIDENT REPORT

Chattanooga Police Department

3410 Amnicola Hwy

REPORT NUMBER: 24-024660
ORI# TN0330100
DATE FROM: 03/19/2024 TIME:20:56
DATE TO: 03/19/2024 TIME:20:56
REPORTED DATE: 03/19/2024 TIME:23:36

ADMIN

LOCATION:	BRIEF DESCRIPTION OF INCIDENT
[redacted] Chattanooga,, TN 37343	False Pretenses/Swindle/Confidence Game - Lawton,

OFFENSE TRACT	DISPOSITION	CASE STATUS	EXCEPTIONAL CLEARANCE CODE	EXC CLEAR DATE	INVESTIGATED BY OUTSIDE AGENCY
Adam 3	NOT CLEARED	3			

OFFENSE

UCR CODE	OFFENSE	DEPT CODE	RELATED TO TCA#	COUNTS	FAM
26A	26A False Pretenses/Swindle/Confidence Game	26A		1	

BIAS MOTIVATION: 88 | PREMISE TYPE: 20 | TYPE OF RESIDENCE: 02 | OFFENSE STATUS: ☑ COMPLETED | OFFENDER USED: ☐ ALCOHOL ☐ DRUGS ☐ COMPUTER

BURGLARY ONLY: ☐ FORCED ENTRY | HOSTAGE INVOLVED? ☐ | ALARM STATUS | NO OF PREMISES ENTERED | POINT OF ENTRY 1 2 3

INSTRUMENT USED: 1 2 3 | CRIMINAL ACTIVITIES 1 2 3 | EVIDENCE AT SCENE 1. 2. 3

WEAPON/ FORCE INVOLVED: 1 2. 3 | ACTS INVOLVED? 1. 2. 3 | ☐ CARGO THEFT | ☐ DRUG RELATED | IDENTITY THEFT N

OFFENSE

UCR CODE	OFFENSE	DEPT CODE	RELATED TO TCA#	COUNTS	FAM
90Z	90Z Harassment All Others	90Z-5		1	

BIAS MOTIVATION: 88 | PREMISE TYPE: 20 | TYPE OF RESIDENCE: 02 | OFFENSE STATUS: ☑ COMPLETED | OFFENDER USED: ☐ ALCOHOL ☐ DRUGS ☐ COMPUTER

BURGLARY ONLY: ☐ FORCED ENTRY | HOSTAGE INVOLVED? ☐ | ALARM STATUS | NO OF PREMISES ENTERED | POINT OF ENTRY 1 2 3

INSTRUMENT USED: 1. 2. 3 | CRIMINAL ACTIVITIES 1. 2. 3 | EVIDENCE AT SCENE 1 2. 3

WEAPON/ FORCE INVOLVED: 1 2. 3 | ACTS INVOLVED? 1. 2. 3 | ☐ CARGO THEFT | ☐ DRUG RELATED | IDENTITY THEFT

OFFENSE

UCR CODE	OFFENSE	DEPT CODE	RELATED TO TCA#	COUNTS	FAM

BIAS MOTIVATION | PREMISE TYPE | TYPE OF RESIDENCE | OFFENSE STATUS: ☐ COMPLETED | OFFENDER USED: ☐ ALCOHOL ☐ DRUGS ☐ COMPUTER

BURGLARY ONLY: ☐ FORCED ENTRY | HOSTAGE INVOLVED? ☐ | ALARM STATUS | NO OF PREMISES ENTERED | POINT OF ENTRY 1 2. 3

INSTRUMENT USED: 1 2 3 | CRIMINAL ACTIVITIES 1 2. 3 | EVIDENCE AT SCENE 1 2. 3

WEAPON/ FORCE INVOLVED: 1 2. 3 | ACTS INVOLVED? 1 2. 3 | ☐ CARGO THEFT | ☐ DRUG RELATED | IDENTITY THEFT

VICTIM

NAME	STATEMENT	HOME	CELL
Lawton, Regina A	☐	[redacted]	

ADDRESS	WORK	EMAIL
[redacted]		

DOB	AGE	TO AGE	RACE	SEX	RESIDENT	ETHNICITY	SSN
[redacted]	58		W	F	NON RESIDENT	N	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦

EYE COLOR	HAIR COLOR	HEIGHT	WEIGHT	DLN	STATE	EMPLOYER
HAZEL	BROWN	504	173	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦	TN	

VICTIM TYPE	VICTIM IS COMPLAINANT	AGG ASSAULT 1	AGG ASSAULT 2	JUST NOM CIRCUM
Individual	☑			

VICTIM IS: ☐ OFFICER ☐ STUDENT | SCHOOL NAME | OCCURRED ON CAMPUS ☐ | DOMESTIC VIOLENCE ☐ | TRANSPORTED TO SAFE PLACE

INJURIES (UP TO FIVE): ☐ NONE ☐ MINOR ☐ INTERNAL ☐ TEETH ☐ UNCONSCIOUS ☐ LACERATIONS ☐ BONES ☐ OTHER

RELATED OFFENSES: 1.26A 2.90Z 3. 4. 5. 6. 7 8. 9. 10

RELATION OF VICTIM TO OFFENDER(S): 1 2. 3 4 5

SMTS

LEOKA TYPE	LEOKA VEHICLE	LEOKA ACTIVITY

SUSPECT

NAME	MONIKER	ARRESTED?	HOME
Massengale, Tamela G		☑	Unknown

ADDRESS	CELL	WORK
727 E 11th St Chattanooga,, TN 37403-3104		

DOB	AGE	TO AGE	RACE	SEX	RESIDENT	ETHNICITY	SSN
2/9/1964	60		W	F		N	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦

EYE COLOR	HAIR COLOR	FACIAL HAIR	HEIGHT	WEIGHT	DLN	STATE
HAZEL	BROWN		507	137	♦♦♦♦♦♦♦♦♦♦♦♦♦♦♦	TN

CLOTHING	GANG NAME/AFFILIATION
	Unknown

SMTS

RELATED OFFENSES: 1.26A 2.90Z 3. 4. 5. 6. 7 8. 9. 10

REPORTING OFFICER	PARTNER	REVIEWING OFFICER	REVIEW DATE
87266 Siler		61653 Ortel, Michael	03/20/2024

PROPERTY/VEHICLE/DRUG

Chattanooga Police Department

REPORT NUMBER: 24-024660

ORI# TN0330100

PROPERTY

UCR CODE	IBR STATUS	STATUS	CLASS	PROPERTY DESCRIPTION
26A	7		20	Currency

MAKE	MODEL	SERIAL	COLOR	QTY	VALUE
Currency				1	$400.00

RECOVERED VALUE	DATE RECOVERED	NCIC #	ENTERED BY	RELATED TO
				VICTIM 1 Lawton, Regina A

INSURANCE CARRIER	ADDRESS	PHONE	IF ARSON OCCURRED?
			☐

PROPERTY

UCR CODE	IBR STATUS	STATUS	CLASS	PROPERTY DESCRIPTION

MAKE	MODEL	SERIAL	COLOR	QTY	VALUE

RECOVERED VALUE	DATE RECOVERED	NCIC #	ENTERED BY	RELATED TO

INSURANCE CARRIER	ADDRESS	PHONE	IF ARSON OCCURRED?
			☐

PROPERTY

UCR CODE	IBR STATUS	STATUS	CLASS	PROPERTY DESCRIPTION

MAKE	MODEL	SERIAL	COLOR	QTY	VALUE

RECOVERED VALUE	DATE RECOVERED	NCIC #	ENTERED BY	RELATED TO

INSURANCE CARRIER	ADDRESS	PHONE	IF ARSON OCCURRED?
			☐

VEHICLE

LICENSE PLATE	STATE	TYPE	MAKE	MODEL	VIN

YEAR	STYLE	COLOR	DESCRIPTION	STATUS	RECOVERED PARTS
					☐

RECOVERED DATE	NCIC CLEARANCE	RECOVERED LOCATION	RECOVERED BY	STORED AT

RELEASE DATE	RELEASED TO	RELEASED LOCATION	RELEASED BY	RELATED TO

VEHICLE

LICENSE PLATE	STATE	TYPE	MAKE	MODEL	VIN

YEAR	STYLE	COLOR	DESCRIPTION	STATUS	RECOVERED PARTS
					☐

RECOVERED DATE	NCIC CLEARANCE	RECOVERED LOCATION	RECOVERED BY	STORED AT

RELEASE DATE	RELEASED TO	RELEASED LOCATION	RELEASED BY	RELATED TO

DRUG

DRUG CODE	DESCRIPTION	STATUS	QTY	MEASURE	COLOR

LOCATION	# OF PLOTS	LATITUDE	LONGITUDE	# OF PLANTS

☐ BUYING ☐ CULTIVATING ☐ DISTRIBUTING ☐ EXPLOITING CHILDREN ☐ OPERATING ☐ POSSESSING ☐ TRANSPORTING ☐ USING

DRUG

DRUG CODE	DESCRIPTION	STATUS	QTY	MEASURE	COLOR

LOCATION	# OF PLOTS	LATITUDE	LONGITUDE	# OF PLANTS

☐ BUYING ☐ CULTIVATING ☐ DISTRIBUTING ☐ EXPLOITING CHILDREN ☐ OPERATING ☐ POSSESSING ☐ TRANSPORTING ☐ USING

DRUG

DRUG CODE	DESCRIPTION	STATUS	QTY	MEASURE	COLOR

LOCATION	# OF PLOTS	LATITUDE	LONGITUDE	# OF PLANTS

☐ BUYING ☐ CULTIVATING ☐ DISTRIBUTING ☐ EXPLOITING CHILDREN ☐ OPERATING ☐ POSSESSING ☐ TRANSPORTING ☐ USING

DRUG

DRUG CODE	DESCRIPTION	STATUS	QTY	MEASURE	COLOR

LOCATION	# OF PLOTS	LATITUDE	LONGITUDE	# OF PLANTS

☐ BUYING ☐ CULTIVATING ☐ DISTRIBUTING ☐ EXPLOITING CHILDREN ☐ OPERATING ☐ POSSESSING ☐ TRANSPORTING ☐ USING

ADDITIONAL NARRATIVE Chattanooga Police Department	REPORT NUMBER: 24-024660 ORI# TN0330100

NARRATIVE TITLE
Report Narrative

Exhibit 5

NARRATIVE

Title: Report Narrative

On 03/19/2024 at 23 12 hours, Officer Siler #1156 responded to a False Pretenses/Swindle/Confidence Game and Harassment at [redacted] Officer Silor made contact with Regina Lawton (W/F) via phone Ms. Lawton found an advertisement for great Dane puppies and responded Ms Lawton is looking for a puppy to train as her medical assistance dog. Ms Lawton contacted Tamela Massengale (W/F) and sent $100 for a deposit. Today, Ms. Massengale sent messages asking for $200 to help feed the puppies Ms Lawton was not willing to send the money until Ms Massengale coerced her by saying the puppies are going to die. Ms Massengale was upset and frantic when Venmo would not release the money from Ms. Lawton. Ms. Massengale contacted Venmo with Ms. Lawton on the line so the money would be released In the meantime, Ms. Lawton sent another $100 to Ms. Massengale. Ms. Lawton said she just wanted all of her money back. Ms. Massengale said, "I killed my husband and got away with it. You don't think I can do it again?" Ms. Massengale continues with the threatening messages. Ms. Lawton would like to see charges on Ms. Massengale for the false pretenses and harassment. Nothing further at this time.

REPORTING OFFICER	REVIEWING OFFICER	REVIEW DATE

Exhibit 5.1

APPEARANCE BOND

for

All Appearances Before Court of

STATE OF TENNESSEE
County of Hamilton

Case No. 1941913
Date: 03/28/2024

We, the undersigned, Principal and Sureties, acknowledge ourselves indebted to the State of Tennessee, Jointly and severally, in the sum of

$500.00

to be void on condition the said defendant

MASSENGALE,TAMELA

makes his or her appearance before Sessions Court, when sitting for the County of Hamilton at the County-City Courts Building, in Chattanooga,

on the 29 day of April, 2024 at 08:30 AM

AND SUCH OTHER TIMES - INCLUDING POST TRIAL APPEARANCES AS THE COURT MAY DIRECT

Then and there to answer to the charge of the State of Tennessee, pending against him or her by warrant, for

HARASSMENT

and not depart Court without leave. It is agreed and understood that this obligation is binding upon principal and sureties for any post trial appearances set upon a day certain for defendant, unless specifically relieved by the Court.

Approved this 28 day of March, 2024
VINCE DEAN, Clerk
Deputy Clerk

Prin.
A-1 BONDING CO.
Sur.
4238276837
Sur.
Sur.

Brandy Silcox
1158
698-2525
(Sig Joined)

APPEARANCE BOND

for

All Appearances Before Court of

STATE OF TENNESSEE
County of Hamilton

Case No: 1941912
Date: 03/28/2024

We, the undersigned, Principal and Sureties, acknowledge ourselves indebted to the State of Tennessee, Jointly and severally, in the sum of

$500.00

to be void on condition the said defendant

MASSENGALE,TAMELA

makes his or her appearance before Sessions Court, when sitting for the County of Hamilton at the County-City Courts Building, in Chattanooga,

on the 29 day of April, 2024 at 08:30 AM

AND SUCH OTHER TIMES - INCLUDING POST TRIAL APPEARANCES AS THE COURT MAY DIRECT

Then and there to answer to the charge of the State of Tennessee, pending against him or her by warrant, for:

THEFT UNDER $500

and not depart Court without leave. It is agreed and understood that this obligation is binding upon principal and sureties for any post trial appearances set upon a day certain for defendant, unless specifically relieved by the Court.

Approved this 28 day of March, 2024
VINCE DEAN, Clerk
By _____ Deputy Clerk

_____ Prin.
A-1 BONDING CO. Sur.
4238278407 Sur.
_____ Sur.

Exhibit 6

10520 Brickhill Lane
Soddy-Daisy TN 37379
davidtulisceditor@gmail.com
Dec. 26, 2023

Lorrie Miller
Chief magistrate, Hamilton County
601 Walnut St.
Chattanooga, TN 37402
lorriem@hamiltontn.gov,

Dear Mrs. Miller,

Your practice of denying members of the public the right to be complainants alleging crime before a magistrate is improper and outside the law. In a phone call Dec. 18 you ask me to send you an email detailing my concerns about arrest warrant creation shortcuts.

Arrest warrants under your custom and usage are not sworn by a complainant. They are sworn by police officers and deputies who make appearance before you or another magistrate, draft a complaint of arrest, swear to it and obtain your signature.

This shortcut is companion to Hamilton County's general warrants practice, a separate breach outlawed by Tenn. const. Art. 1, sect. 7 that "the people shall be secure in their persons *** from unreasonable searches and seizures, and that general warrants *** are dangerous to liberty and ought not to be granted,"and sect. 8 that "no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land,"

and the U.S. constitution bill of rights, the 4th amendment, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Tennessee warrants law requires that the complainant make appearance before you, swear under oath to God or under personal affirmation that he tells the truth, [1] puts the charge in writing, then swears out the arrestable crime.

> A warrant of arrest is an order, in writing, stating the substance of the complaint, directed to a proper officer, signed by a magistrate, and commanding the arrest of the defendant.

Tenn. Code Ann. § 40-6-201 (West)

The warrant is to be based upon sworn statements reduced to writing by an accuser based on first-hand knowledge. The officer is part of this sequence. He enters the scene because the warrant is "directed to" that "proper officer" commanding him to "arrest *** the defendant." The magistrate puts into the officer's hand the sworn accusation of the fact witness, victim or accuser. The officer serves the interest of justice by departing the magistrate's office to make the arrest.

The necessity for victim and witness swearing is vital for the protection of the innocent, and to not remove a burden the law requires be placed upon an accuser or witness. Keeping a victim or fact witness from presenting himself before the magistrate throws sand and grit into the justice expected in commencement of a prosecution.

> A prosecution is commenced, within the meaning of this chapter, by finding an indictment or presentment, **the issuing of a warrant,** the issuing of a juvenile petition alleging a delinquent act, binding over the offender, by the filing of an information as provided for in chapter 3 of this title, or by making an appearance in person or through counsel in general sessions or any municipal court for the purpose of continuing the matter or **any other appearance in either court for any purpose involving the offense**. A prosecution is also commenced, within the meaning of this chapter, by finding an indictment or presentment or the issuing of a warrant identifying the offender by a deoxyribonucleic acid (DNA) profile.

§ 40-2-104. Prosecution; commencement

The issuing of a warrant requires a fact base just as the obtaining of an indictment. A witness makes appearance before the grand jury if he has first-hand knowledge of a crime

[1] Personal affirmation is accepted, even though the swearing carries no invocation of God's sovereign damnatory authority to judge the false swearer in the next life, if not in this one.

having been committed. The process, outlined at 40-12-104. Application to testify by person having knowledge of commission of offense.

> **(a)** Any person having knowledge or **proof of the commission of a public** offense triable or indictable in the county may testify before the grand jury.
> **(b)** The person having **knowledge or proof** shall appear before the foreman. The person may also submit the **sworn affidavits** of others whose testimony the person wishes to have considered.
> **(c)** The person shall designate two (2) grand jurors who shall, with the foreman, comprise a panel to determine **whether the knowledge warrants investigation** by the grand jury. The panel **may consult** the district attorney general or the court for guidance in making its determination. The majority decision of the panel shall be final and shall be promptly communicated to the person along with reasons for the action taken.
> **(d)** Submission of an affidavit which the person knows to be false in any material regard shall be punishable as perjury. An affiant who permits submission of a false affidavit, knowing it to be false in any material regard, is guilty of perjury. Any person subsequently testifying before the grand jury as to any material fact known by the person to be false is guilty of perjury.

40-12-104. Application to testify by person having knowledge of commission of offense (emphasis added)

If an affiant appears before the grand jury with less than first-hand testimony, his presentation either to the select committee or the whole body might be enough for the grand jury to exercise its investigatory powers independent of any testimony by officer or citizen at § 40-12-201. Use of investigative grand jury. Fact testimony before the grand jury is sworn and any claim "false in any material regard shall be punishable as perjury."

The grand jury in this instance relies on first-hand testimony under penalty of perjury.

Officers comprise the bulk of testimony before the grand jury. They are forbidden to testify apart from investigations making them, effectively, firsthand witnesses that a crime has been committed by a person, and that there is probable cause to believe that the party identified committed the crime, sufficient for a trial on the facts by the petit jury.

Perjury is forbidden in Tennessee. The necessity to bring a complainant before a magistrate when a crime is in process of being created is clear in the prohibition itself of false witnessing and talebearing in an official matter.

A person commits aggravated felony perjury "who, with intent to deceive: (1) Commits perjury as defined in § 39-16-702; (2) The false statement is made during or in

connection with an official proceeding; and (3) The false statement is material" T.C.A. § 39-16-703. Aggravated perjury.

In 702, perjury is defined as an act "with intent to deceive" by a person who "**(1)** Makes a false statement, under oath; **(2)** Makes a statement, under oath, that confirms the truth of a false statement previously made and the statement is required or authorized by law to be made under oath" or makes a false statement, not under oath, on an official document or a false statement made under a jurat "under penalty of perjury." Perjury in 102 is a misdemeanor.

The definitions of perjury have bearing on the matter of complainant swearing vs. officer swearing before a magistrate to create a criminal offense for which arrest warrant issues

A swearing before a magistrate at the jail, in demanding an arrest warrant for a crime having been committed, **is a high crime if false**.

It being a felony puts the affiant on awares as to the **penalty** for false accusation. Felony perjury is sentenced to a year or more in prison. Swearing secures great certitude as to accuracy and authenticity in the allegation. Not only might such a false accuser be guilty of a crime if he lies, but also a tort of slander, civilly actionable, especially if there is no mistake involved in the claim about a crime, but malice, vengeance or evil intent operative.

Courts prefer first-hand testimony

Courts prefer authentic data as the basis of a prosecution. Rule 3. The Affidavit of Complaint requires "an affidavit of complaint" by the victim or first-hand witness.

> The affidavit of complaint is a statement alleging that a person has committed an offense. It must:
>
> (a) be in writing;
>
> (b) be made on oath before a magistrate or a neutral and detached court clerk authorized by Rule 4 to make a probable cause determination; and
>
> (c) allege the essential facts constituting the offense charged.

Tenn. R. Crim. P. 3

As might be expected, judges want fact-based testimony swearing, not hearsay and third-party estimations of fact.

> The judge was of opinion that the warrant was groundlessly and improvidently issued and refused to allow the justice any costs, and he has appealed to this court. The party giving the information to the justice, knew nothing of the commission of the offense, but had been told by a third party such offense had been committed, and so stated to the justice. Under these circumstances the magistrate ought not to have issued a warrant, as being informed that **the informant knew nothing about the matter, he could not have been satisfied that such offense was committed, as he should have been before issuing the warrant**: Code, sec, 5022. The warrant was, therefore, **issued improvidently and without sufficient legal grounds,** and the judgment of the criminal court refusing to tax the costs thereof is affirmed.

State v. Good, 77 Tenn. 240 (1877) (emphasis added)

The legal grounds for the creation of an arrest warrant are a victim, testimony, the writing of the instrument, the taking an oath, the signature of the judge or magistrate, and the document in the officer's hand.

Swearing = accountability, accuracy

The rules of criminal procedure require firsthand accountability for allegations of a crime. T.C.A. § 40-6-203, informants; examination, states the following:

> (a) Upon information made to any magistrate of the commission of a public offense, the magistrate shall examine, on oath, the **affiant or affiants**, reduce the examination to writing, and **cause the examination to be signed by the person** making it.

§ 40-6-203. Informants; examination (emphasis added)

The following is in the commentary, highlighting the interaction between affiant complainant and the magistrate. 3.1 Tennessee Rule of Criminal Procedure 3 note says the magistrate is not a mere paper pusher.

> It is important that any clerk issuing an arrest warrant know and fully appreciate the legal significance of the fact that it is a judicial function which is being performed. The validity of the warrant depends upon the making of a probable cause determination; **a warrant must never be issued as a mere ministerial act done simply upon application.**

See also Tenn. Code Ann. § 40-6-205(a); Tenn. Rules Crim.P 3 & 4.

Instances of abuse

1. The false imprisonment and false arrest of Michael James, case Nos. 1802593 and 1802594. General sessions judge Gerald Webb dismissed the case based on Mr. James' brief of the county's rejection of the sworn first-hand complainant rule. Two teen girls in a stolen auto, meeting Mr. James late at night on a city street, called 911 with accusation that he threatened them by waving a pistol out his car window. They crash their car into a building. Witness Mr. James calls police and waits for officers to arrive. They arrest him and take him to you, Mrs. Miller, the magistrate on duty, and charge him with two counts of felony assault. You release Mr. James on his own recognizance. Neither girl is willing to swear out a statement to create a crime. The officer, Lance Hughes, affects an arrest as a third party having no facts and no *corpus delecti*. Aggrieved Mr. James, victim of false imprisonment and false arrest, is suing Hughes and the city seeking damages.

2. Shameca Burt is in Silverdale detention center over the Christmas and New Year's holidays on an arrest warrant obtained on behalf of Tractor Supply Signal Mountain. Mrs. Burt, who's in the pallet recycling and refurbishing business, is accused of theft of five discarded pallets outside the fenced-in goods-for-sale-outdoors area, a stack near the dumpster she takes per an established routine. An employee calls police, who hears a claim of theft. The city police officer — not the employee connected with the victimized business — goes to a magistrate and obtains a warrant by swearing it out, according to my information and belief. The officer is a third-person party, not familiar with the facts, having gotten one side. Mrs. Burt, in court in a traffic infraction, is seized under the warrant and remains jailed without bond. She has a "probation violation" hearing before Judge Boyd Patterson Jan. 3, 1:30 p.m. docket.

3. Donna Robertson, a retired hairdresser, 69, asks me to help her draft an affidavit of complaint against her apartment building manager. On March 23, 2022, he rapes her in her bathroom, having gained entry on an inspection of the unit's drains and forcing her into an act of fellatio in her bathroom. I phone you asking how to proceed. She is directed to bring her 37-point affidavit to a city police officer. I witness this encounter with Mrs. Robertson and a young policewoman whose evaluation of the facts controls. No action is taken.

Argument

Prohibiting the operation of law lowers the quality of criminal cases. Hamilton County's courts get less reliable charges than if the law were obeyed, and are less able to be free from injustice and wrongdoing. You thwart the duty of the fact witness or victim to swear before God, and under the menace of the felony perjury law, to recount his narrative of being a crime victim.

You prohibit evidence-based warrants, and you institutionalize and require hearsay only-based warrants.

Except for the case of rape, the examples I cite are manifest injuries to state victims, to people whose due process rights are overridden by policy.

In "he said-she said" cases where officers are not witnesses, it is essential that no one be arrested and no one charged until after a sworn complaint is made. In Mr. James' case, the officer should not have touched him until after getting the warrant by one of the girls sworn. The officer would then have had to track down Mr. James to serve the warrant, perhaps calling him by phone to ask this good citizen to meet him at the jail for service. Without a swearing there is no case whatsoever, as he points out in his filings.

Your protocol, Mrs. Miller, is a short-cut and expediency that perpetuates injustice and harm.

I request from you copies of legal briefs, rulings, analyses or resolutions that authorize what you are doing in office as chief magistrate.

I await your response and authorities in response to this analysis that you invited me to send you in our phone call Dec. 18.

Respectfully yours,

David J. Tulis

David Jonathan Tulis

Gmail

Exhibit 7

David Tulis <davidtuliseditor@gmail.com>

Magistrate Miller grievance — to all commission members

2 messages

David Tulis <davidtuliseditor@gmail.com> Fri, Mar 1, 2024 at 3:48 PM
To: district10@hamiltontn.gov

Dear Sir,

Chief magistrate Lorrie Miller is breaching state law in a policy regarding arrest warrants.

She operates an illegal arrest warrant system in which first-hand fact witnesses and crime victims are not allowed to swear out an arrest warrant before her or either of the three other magistrates.

She says only officers or deputies may swear out the arrest warrant before a magistrate. She explains that this method "avoids problems" created when fact witnesses and victims go before a magistrate to testify and to seek an arrest warrant. The law requires the magistrate to conduct an examination of any party demanding an arrest warrant, whether officer, deputy or citizen. The examination process weeds out illegal, improper, perjured, malicious, capricious demands that don't deserve judicial favor.

Criminal procedure requires the best presentation of facts before an arrest warrant issues. That means that fact witnesses and victims must swear out the warrant after the grievance has been reduced to writing. Her policy has *second-hand officer-created warrants*. Fact witnesses are ignored as the source of the arrest warrant. Officer testimony is the basis instead.

On Dec. 26, 2023, I sent Mrs. Miller the attached letter, at her request. I followed up by requesting a meeting. I demanded also she supply me with authorities for her custom and usage. Both are denied.

I moved to stop this continuing harm in covering the story of Shameca Burt, a businesswoman in the pallet recycling business confined 108 days in Silverdale under this bogus system.

Criminal court judges Boyd Patterson and Barry Steelman have reviewed the attached magistrate letter. In open court Judge Patterson says a judicial fix of this problem must

await a court case in which this issue is part of the pleadings. That depends on an attorney bringing it up, which might be years out.

These are continuing harms I ask you to consider following Mrs. Miller's presentation at the county commission Wednesday.

I have reported on the problem extensively at 96.9 FM and NoogaRadio Network and on TNtraffickticket.us and at Davidtulis.substack.com.

Respectfully yours,

David Tulis

CC Lorrie Miller lorriem@hamiltontn.gov

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

WARRANTS Lorrie Miller protocol on swearing warrant.pdf
411K

David Tulis <davidtuliseditor@gmail.com> Fri, Mar 1, 2024 at 3:55 PM
To: "Miller, Lorrie" <LorrieM@hamiltontn.gov>

[Quoted text hidden]

WARRANTS Lorrie Miller protocol on swearing warrant.pdf
411K

Exhibit 8

Gmail David Tulis <davidtuliseditor@gmail.com>

Tulis inquiry regarding Lorrie Miller arrest warrant protocol

5 messages

David Tulis (via Google Docs) <davidtuliseditor@gmail.com>
Reply-To: David Tulis <davidtuliseditor@gmail.com>
To: davidtuliseditor@gmail.com
Cc: lorriem@hamiltontn.gov

Tue, Dec 26, 2023 at 2:10 PM

David Tulis attached a document

David Tulis (davidtuliseditor@gmail.com) has attached the following document:

Dear Lorrie, here is my inquiry regarding the county's arrest warrant procedures I would like an on-air interview about these concerns of abrogation of constitutional rights and statute

In getting this email together, I may have accidently sent misfires your way Please ignore earlier versions if they did indeed escape me

Respectfully yours,

David

WARRANTS Lorrie Miller protocols on swearing warrant

WARRANTS Lorrie Miller protocols on swearing warrant.pdf
169K

David Tulis <davidtuliseditor@gmail.com> Fri, Jan 5, 2024 at 10:48 AM
To: David Tulis <davidtuliseditor@gmail.com>

Dear Lorrie, I request a meeting to discuss my review of arrest warrant requirements. Please let me know what day works for you. Might it be better to wait on a visit until after you supply me your authorities, and I have time to study them?

Please advise what works best for you.

Respectfully yours,

David

On Tue, Dec 26, 2023 at 2:10 PM David Tulis (via Google Docs) <davidtuliseditor@gmail.com> wrote:

David Tulis attached a document

David Tulis (davidtuliseditor@gmail.com) has attached the following document:

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In getting this email together, I may have accidently sent misfires your way Please ignore earlier versions if they did indeed escape me

Respectfully yours,

David

WARRANTS Lorrie Miller protocols on swearing warrant

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

David Tulis <davidtuliseditor@gmail.com> Fri, Jan 5, 2024 at 10:49 AM
To: "Miller, Lorrie" <LorrieM@hamiltontn.gov>

Dear Lorrie, I request a meeting to discuss my review of arrest warrant requirements. Please let me know what day works for you. Might it be better to wait on a visit until after you supply me your authorities, and I have time to study them?

Please advise what works best for you.

Respectfully yours,

David

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In getting this email together, I may have accidently sent misfires your way Please ignore earlier versions if they did indeed escape me

Respectfully yours

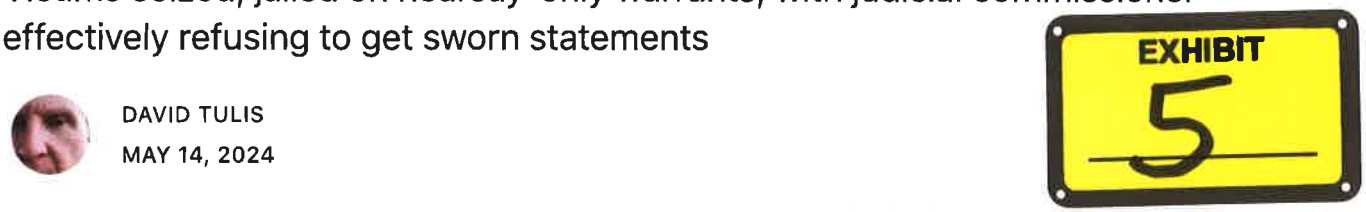
David

Exhibit 9

Tamela Grace Massengale, left, and Shameca Burt are victim of errant arrest policy in Hamilton County, with Mrs. Burt illicitly held in Silverdale jail 108 days on account of being accused by a store employee of theft without that man being required to testify and swear out a complaint.

TRANSCRIPT: Judge threatens police victim 'next friend' as case defies illegal arrest warrants

Victims seized, jailed on hearsay-only warrants, with judicial commissioner effectively refusing to get sworn statements



DAVID TULIS
MAY 14, 2024

Share

Left photo, county magistrate Lorrie Miller appears at a county commission meeting near to one of her false arrest victims, truck driver Michael James of "911 call from hell" fame; center top, Tamela Greace Massengale, focus of a criminal proceeding ignited by an illegal (and erroneous) arrest warrant; bottom photo, Chattanooga cop Brandi Siler who makes no investigation but swears out an arrest warrant of Mrs. Massengale; right photo, Shameca Burt, jailed 108 days under Lorrie Miller's illegal arrest warrant protocols and due at least F$5 million in actual and punitive damages once an attorney files her 42 U.S.C. 1983 against Hamilton County and magistrate Lorrie Miller in U.S. district court. (Photos TV III (Siler), David Tulis)

CHATTANOOGA, Tenn., Monday, April 29, 2024 — A criminal court proceeding today in general sessions court of Hamilton County reflects the lawless consequence of a county magistrate who forbids lawful arrest warrants and allows warrants to be sworn only by cops and deputies, reputed and generally known to be the county's most honest and accountable citizens.

To halt this longstanding criminality by government officials I file "Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false affest; Petition for writ of certiorari" in the county's criminal court in service of a policy victim.

The petition would remove the case from Judge Larry Ables' court and give a criminal court of record authority to command Mrs. Miller to obey state law and require fact witnesses and crime victims to swear out arrest warrants. Her illegal policy creates bogus criminal cases, including that against Shameca Burt, behind bars at Silverdale jail 108 days on account of Mrs. Miller's **requiring only hearsay arrest warrants, unsworn by alleged victims.**

Judge Ables defends the closed union shop that is the Hamilton County bar association and the cartels of lawyers and attorneys who privatize the law and run a **barratry** system that generates rows of crime victims, prolonged criminal proceedings and civil litigation for their financial security, profit, personal estates and heirs.

Mrs. Massengale's case hints that all parties in the county's judicial-industrial complex ought to come together to halt continuing harm against the citizenry, or to allow the people to overthrow systems churning uncorrected for years, so that under Tenn. const. art. 1 sect. 1 the people might restore public justice for God's glory.

Steve Smith, elected public defender

Public defender Steve Smith says the Miller policy is 20 years old and came about because private citizens swore false arrest warrants on each other. Swearing falsely in a public proceeding is felony perjury, enforcement of which law prevents false statements leading to false arrest.

TRANSCRIPT

Judge Larry Ables All right, we are here in the matters of Tamela Massengale, case numbers 1941912 and 1941913. *** Miss Massengale earlier was asked to leave the courtroom and sit outside because she was a little disruptive earlier, probably because she doesn't understand what happens in court. So now she understands what's going on.

I'm a little confused. I've asked the District Attorney General to have a representative here. So what is it that's going on with this case today?

Tamela Grace Massengale May I speak now?

Judge Ables Yes.

Mrs. Massengale I would like the court to recognize David Tulis as my next friend and counsel. By appointing him, I'm exercising my rights to appoint anyone of my choice for counsel. David is not an attorney. Nor has he ever claimed to be an attorney. David is just my next friend. To define next friend *** David is someone that I trust. David is someone that has knowledge of my case. David is someone that is much more knowledgeable in the law than I am. He is somebody that I look to for his opinion, somebody that I look to for support, and somebody that I trust. I also appoint David to speak for me on my behalf when needed. The court's recognition of David's status as my next friend must come first. If David is not recognized by this court as my next friend and I am denied this constitutional right and I feel that this court is not properly set and I will not be able to proceed. Thank you, your honor.

Judge Ables *** I wanna give you a copy of the unlawful practice of law. That's Tennessee Code Annotated 23-3-103. There's a copy for you and there's a copy for Mr. Tulis. And I think that it's very important, more for Mr. Tulis's sake than for your sake that he [be] very familiar with that statute because I'm gonna ask the district attorney to review this and see where we're at as far as Mr. Tulis's practicing law.

The Supreme Court has defined the practice of law as any service rendered involving legal knowledge or legal advice, whether a representation, counsel or advocacy in or out of court rendered in respect to the rights, duties, obligations, liabilities of business relations, or one requiring the services. The judiciary has passed these rules and laws to protect the public and they protect the public from the incompetent, the untrained and the unscrupulous in the practice of law. So we have laws to protect people from being represented by someone who may be very intelligent but not be trained as an attorney and therefore not be familiar with all the rights and regulations that are accompanied with that. And so it becomes a little bit troublesome when a nonlawyer is – is here and asking to represent somebody. In fact, I think that it's contrary to both the laws of the state of Tennessee. It's also contrary to the public interest of Tennessee. So, Mr. Tulis has his hand raised and you are happily – I – I would like to hear what you would like to say.

David Tulis Thank you, Judge Ables. I appreciate the reference to the statute that is the authority in this whole license practice of law problem area for the judiciary. It's a clear problem. But as Miss Grace indicated that I am here as a Christian looking to give

mercy to her. I'm not in breach of this UPL statute which I carefully looked at. And the definitions make clear, Judge Ables, that there has to be "valuable consideration." In fact, that phrase is in the definitions **three times**. "Valuable consideration" in the "law business" – which I do not conduct – of advising and counseling, drawing papers on law. This is in [sect.] 101 – representative capacity, which I don't have. I do not represent her. As her next friend, she is here and I'm kind of behind her –

Judge Ables – That – that is of little legal consequence. You are standing here. You are now addressing the court on her behalf. So hiding behind her is going to be akin to representing her.

Tulis – Well, sir, may I respond?

Massengale filing seeks to end magistrate abuse

Judge Ables Sure.

Tulis I'm not speaking on her behalf, Sir. I'm speaking with her. And that is under Article One, Section 23, the constitution, which is the right to assemble together. I'm assembling with Miss Grace "for the common good, [reading] to instruct their representatives and to apply to those invested with the power of government for address agreements by address or remonstrance." My filing, copied to you, sir, in this court for remonstrance of the arrest warrant breach that is endemic in our county, I'm here with her. I'm not in her place. I do not represent her. She makes all decisions. *** This morning she had me – she had me draft for her a motion to quash, which we

Mrs. Massengale – Have it right here.

Judge Ables I have several pieces of paper here and several motions that all appear to be legal in nature.

Mrs. Massengale Can I hand this to the DA, sir, your honor?

Judge Ables Yes, ma'am. *** She certainly on her own can hand that to you. But the fact that these documents have been drafted apparently and signed, respectfully, submitted, by David Jonathan Tulis, is quite concerning to the court because – you may not be calling yourself her attorney. You may not be representing that you're her attorney. But if you are acting in that capacity, then it creates the *appearance* that you are representing her. And what is the – what is the unlawful practice of law?

You know, what is it that we're supposed to look at? So the appropriate standard is whether a particular action constitutes the practice of law. What is that standard? And I believe that the standard is whether the act in question requires the professional judgment of a lawyer and filing petitions such as a notice of petition, a writ of [certiorari]. Affidavit – all the paperwork that's been filed, I'm fearful that we are not just right up to the line of what's the practice of law is, but that we have in fact *possibly crossed* that line.

LISTEN to judge berate disabled woman's next friend as likely criminal

And so, my concern is, Mr. Tulis, that though you are representing yourself as a Christian, as the next friend, that you can't cloak yourself in the King's language and expect that there's any sort of protection for you based on common law. Do you understand what I'm saying? What I'm suggesting is that your continued – your continued actions on behalf of Miss Massengale may subject you to legal consequences and that's what my concern is.

So, you can certainly react,

Tulis Judge Ables, I appreciate your concern that I'm entering misdemeanor Class A territory by serving in Christian capacity this woman and remonstrating with her. I appreciate that. You don't want me to be in trouble.

Clearly the DAs have in this room right now all the evidence to bring indictment against me for the unlawful – the unapproved, the unauthorized practice of law. They could do that. They've got paperwork to prove it. They've got me being here standing in front of

you. Court clerk Vince Dean says records are made by the court of all preliminary hearings which this is – either the preliminary hearing or show cause hearing.

My response is this, sir.

Taking your counsel to [heart] is that I'm not representing Miss Grace. She has the right under the constitution to have the next friend. There is such a thing, sir. There is such a thing. [Responding to judge's roared-out claim at beginning of court that next friend "does not exist"] Art. 1, sect. 9, says she has a right to be heard by herself and her counsel. The 6th Amendment says the defendant has the right to assistance of counsel for his defense. Of course —

Judge Ables You're not a counsel.

Tulis You've read *Gideon versus Wainwr*ight.

Judge Ables MmHmm.

***

[I cite Tenn. const. Art 1, sect. 9 that "in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; " and the federal 6th amendment that "[I]n all criminal prosecutions, the accused shall enjoy the right to *** have the Assistance of Counsel for his defence."

[The supreme court case says "The right to counsel of choice, however, commands not that a trial be fair, but that a particular guarantee of fairness be provided —to wit, that the accused be defended by ***the counsel he believes to be best.***" *U.S. v. Gonzalez-Lopez* - 126 S.Ct. 2557 Supreme Court of the United States

[I mention the famous *1963 case Gideon v. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). An accused has the right to counsel even if state has to pay for it via 14th amendment.

[I quote *Wheat v. United States*, 486 U.S. 153 (1988), "Thus, while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an *effective advocate for each criminal*

defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers."]

Larry Ables, here at a judge election political event, denies a criminal defendant her right to counsel and imposes on her an overworked taxpayer-funded lawyer who later motions that her filings be dismissed. (Photo Larry Ables)

Tulis Miss Grace has a right is not just to have a lawyer of her choice, but to choose someone to speak with her and to draft documents in her service. I mean, I'm her mouthpiece, as she indicated. I'm not representing her. I'm not giving her orders. I'm not commanding her to do anything. I'm just serving her as a Christian mercy. And so

while it might be at the line of the misdemeanor statute of 23-3-103, I haven't crossed it because I'm not in business.

Judge Ables – OK, but here is your business your business is what? You're an investigative journalist, correct? And so what sort of benefit do you gain from coming to court and representing Miss Massengale? One could argue that you get a monetary interest because I'm sure this will be posted on your webpage and on your radio show and that you will then therefore generate income based on your representation of Miss Massengale. Unless you don't intend to ever speak of this matter in public or if you don't plan on promoting it on your radio program.

Tulis That's not what the statute says.

Judge Ables But you brought up the point. You said I'm not getting any sort of benefit from this. That was basically one of your arguments was.

Tulis I said I'm not receiving valuable consideration.

Judge Ables You **are** receiving valuable consideration. *** How is it not valuable consideration for you, whose livelihood is based on your radio program and your interviews and your content? It's all content driven. How are you not benefiting when Miss Massengale is one of the parties you are promoting through your enterprise?

Tulis – and writing about the speaking about. That's just a very good question. And let me say this, though. No. 1. Nothing that I do in radio or as a writer has any monetary benefit. That is all nonprofit. I have not been paid in radio for years. I have not received a paycheck. I don't receive a paycheck. It is all, in the end – it **is a kind of prophetic Exekiel-type calling that I have in radio.** So whether I get an ad, a new ad, because someone likes my interviews – I don't get the money. Because it goes to pay the operations of my business. I do own half of a radio station, but that's not where my living is from. And no matter how often I write about her, that's not gonna increase revenue at all. But again, sir, that question is beside the point.

Judge Ables But **you brought it up**. You brought it up saying in your Christian capacity that that you're just here — and I'm not — I'm not suggesting that you don't, that that isn't part of what's motivating you. But when you bring that up, the first thing that

comes to my mind is: **This is your whole being. I mean, this is what you're involved in. So even if it weren't a monetary gain, would there be a gain for you, perhaps your ego?** I don't know. But to state that there would be nothing that you gain from this, I don't think would be an accurate statement.

Tulis Well, sir, I believe that this line of questioning is, if I might suggest, improper, and a little lawyering from the bench. Should not the DA's office –

Judge Ables Oh! Oh! I'm going to have the District Attorney follow up on this because of the concern. But you raised the concern, so I'm not lawyering from the bench. You stated these facts. That's why I asked you, you know, to present what you wanted to present. I've only reacted to what you've presented to me. I want to tell you this, Mr. Tulis. I'm fearful that what you are doing is the unlawful practice of law. And when you refer to counsel, sure, there's a common understanding of the word counsel. And then counsel as regard to legal representation is completely different. And I believe that the statute and the legislature and the judiciary of the state of Tennessee protect the public from just this type of occurrence. Now, when people have next friend, yeah, it often happens. Typically it happens with a minor child or it happens when somebody is deceased, that something's filed as next friend. I'm not familiar of any cases where we have next friend representing somebody, or counseling them outside of what would be considered as a legal representation. And if you **have some information like that I would be happy for you to provide that to me.**

But what we're gonna do today is the following: I'm going to ask Miss Massengale if she wants an attorney. I am not going to allow you to stand up here and serve in what I feel – this court is ruling – is an attorney capacity. If she wants to have an attorney, that is fine, we can address that. But she has to make that determination.

So, Mrs. Massengale, do you want to be represented by counsel or do you plan on representing yourself – knowing that I'm not going to let Mr. Tulis as your next friend, stand and whisper in your ear while you're here?

Magistrate Lorrie Miller appears before Hamilton County commission to ask for more money and another magistrate to staff "uncovered" hours at the jail. I am demanding the county commission reduce taxpayer liability exposure by forcing her to halt the county's illegal hearsay-only arrest warrants procedure. (Photo David Tulis)

Mrs. Massengale Your honor, I think I would like to exercise my right to represent myself.

Judge Ables Well, here's what I'm going to do. I'm going to appoint the public defender to represent you as armchair counsel because you are not an attorney and I'm fearful that you don't appreciate or understand the importance of having representation. [Armchair counsel does not "represent" a client, but advises.] And I'm afraid that you have been told some things that may or may not be accurate with your case by your next friend, Mr. Tulis, and I don't know what kind of conversation you all've had, and I'm not suggesting that — that — that — well, I am suggesting that there is definitely some smoke here and some problems with what has already been presented to the court in the form of multiple notices and legal filings which appear to be *** legal in nature. So that's what I'm going to do.

Judge Ables *** I do that because you did not get picked up on two different charges. You've only been arrested one time. All right, so is there anybody here on Miss Massengale's case? Not right now, all right. So what we're gonna do is we're gonna get a court date for Siler, badge 1156, in here.

Just have a seat, Mr. Tulis. When we're done, you can come back and get your telephone, sir, I mean, you are representing her whether you want to claim to be next friend or whatever. You are really creating some issues for you and I just want you to be aware of that. So, so so that none of that's going on in my presence, I'm gonna ask you to sit down. Nothing's going to happen to her. She has counsel. She's been represented now by the public defender's office if she has any questions, she can ask them. If they want to confer with her and you all want to confer outside, then there's a possibility that you can do that. But I'm not gonna allow you to stand here and whisper in her ear.

[Rather than holding a show cause hearing to hear cop and victim show cause, the judge asks if the moving party is present – it is not. So he sets a future date. I speak in whisper to Mrs. Massengale, and an ADA objects.]

Tulis Does she have a right to accept or reject?

Judge Ables Accept or reject what?

Tulis Counsel.

Definitions in UPL statute

"**Law** business" means the **advising or counseling** for valuable consideration of any person as to any secular **law**, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the **doing of any act** for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services;

***

> (3) "**Practice** of **law**" means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with **proceedings pending or prospective** before any court, commissioner, referee or any body, board, committee or commission constituted by **law** or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.
>
> Tenn. Code Ann. § 23-3-101. Definitions (emphasis added)

Judge Ables No. I've appointed counsel for her.

Tulis She does not have the liberty to choose?

Judge Ables She has a liberty to choose to disregard what her attorney tells her, and perhaps she could take on whatever advice you give her. But she will have armchair counsel moving forward. She can represent herself or she can let the public defender represent her, but you are not representing her and you are not going to stand here and whisper in her ear. She has an attorney. If, after consulting with her attorney, she decides that she wants to continue to represent herself, she can come back to court and represent herself. You will not be involved in that representation other than you can discuss things with her after court. You can discuss things with her before court. You will not be filing any briefs. You will not be filing anything. At least I hope that you aren't doing that, for that may be used against you if you were charged with practicing law without a license, which, as I've warned you about, I feel that you are in fact doing.

But we're not here for that.

We're only here for the matters Miss Massengale has pending, so to preserve her rights, I'm appointing an attorney. If she does not want to take her attorney's advice, she doesn't have to. Her attorney will still stay on the record.

Tulis I object.

Judge Ables You object? ***Object?***

Judge Ables You don't have any grounds to object. [Voice rising] What? How would you object as and what standing would you have to object to anything this court does in the matters of Miss Masingale?

Tulis Your Honor, Miss Massengale cannot be denied by your honor of her constitutional right to have counsel of her choice to have that person —

Judge Ables You are not counsel. You are not acounsel. Sorry. You are not, yes. just sit

Grace Massengale [to Tulis] *** I would like you to respect the judge and please sit down.

Judge Ables Thank you. Thank you, ma'am. Miss Mssengale is June 10th a date that works for you? *** You have an absolute right to represent yourself. *** I believe Mr. Tulis has some real issues with the actions that he's taken in this particular case, but that's not for me to look at more determined. That's for the district attorney general's office to review. I gave you a copy of the statute about the unlawful practice of law, and I think if you read through there, you will read some things that that sound awfully close to what has been done already.

So, so now you have an attorney and she's gonna talk to you and if you have some questions, she will answer those questions. If there's something you need guidance from the court, she will come and ask me if there's something that we need to do. And then we're going to pick this court date of June 10th. I'm going to excuse you to go outside and meet with your attorney.

If there's anything that we need to address today, I know that there's several motions that have been filed, I think your attorney needs to look at those because frankly the fact that they've been filed, I don't know that there there's a writ in here which you know trying to get this removed from a lower court to a higher court and it mentions the magistrates.

Magistrates are not a separate court system. The magistrate is created by the county commission to increase the – to decrease – the amount of time somebody's in custody. I mean, it's not separate and apart from general sessions court. They are an arm of general sessions court. So I'm going to give all the paperwork I have received on this to

your attorney and she's going to review it and then we're gonna come back 6/10/24 and if we have anything else we need to address today, we can certainly come back and address that. The district attorney also hasn't had an opportunity, I believe, I don't believe to review all these matters [the DA's office was served all filings] and so everybody will have a chance to catch up and see where we're at to this point. [He assumes I didn't properly serve all the parties. In giving over his file, he has no record to review in an extremely important case.]

Journalist demands court overturn wicked false arrest system

Comments

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,	)	
	)	
Plaintiff,	)	SECOND DIVISION
	)	
vs.	)	
	)	NO(s). 317323
TAMELA GRACE MASSENGALE,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL AS TO PETITION FOR WRIT OF CERTIORARI

This matter is before the Court following the filing of a document entitled *Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for Writ of Certiorari* filed by David Tulis on April 29, 2024. As noted in the petition and accompanying affidavit, Mr. Tulis is not a licensed attorney, but has filed this petition as "next friend" of Ms. Massengale. The Petition specifically requests that this Court "lift the criminal case pending in general sessions, take jurisdiction over the substance of the case, and ministerially dismiss it as a nullity and void because of violations of due process."

Defendant was arrested on March 27, 2024 for theft under $500; theft of property; harassment; and registration, improper display of plates. Those cases remain pending in the General Sessions Court for Hamilton County, docket numbers 1941912 – 1941915. The present petition was filed on April 29, 2024, which is the same day that the office of the Public Defender was appointed to represent this Defendant.[1]

Tenn. Const. art. VI, § 10 provides that "[t]he Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, supported by oath or affirmation." This right was codified in *T.C.A §27-8-104*, and was cited throughout the petition as a statement of jurisdiction.

Although the power to issue writs exists in certain cases, the petition fails to cite any legal authority for this Court's consideration of its petition relative to four *criminal* cases pending in the General Sessions Court. *T.C.A §27-8-101* makes clear that the writ of certiorari may be granted only when authorized by law. Thereafter, Title 27 of the Tennessee Code Annotated only confers authority to the circuit and chancery courts in *civil* matters, and does not specifically authorize the removal of a matter from the general sessions court in criminal cases.

[1] Counsel for the Defendant has now filed a *Motion to Strike Affidavit and Remonstrance in re Tamela Grace Massengale False Imprisonment and False Arrest: Petition for Writ of Certiorari*, which the Court has taken under advisement

Filed Electronically by the Second Division on ***Tuesday, June 4, 2024***

Filed By Email
DATE: 6-4-24
TIME: 2:23pm
BY:

Accordingly, the Court does not have jurisdiction to consider the petition filed on Ms. Massengale's behalf.

The Court also finds that there is a separate issue in this matter related to standing. The doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief. Knierim v. Leatherwood, 542 S.W.2d 806, 808 (Tenn. 1976); Garrison v. Stamps, 109 S.W.3d 374, 377 (Tenn. Ct. App. 2003). In order for standing to exist, the Court must make a finding that the plaintiff has alleged a sufficiently personal stake in the outcome of the litigation to warrant a judicial resolution of the dispute. SunTrust Bank v. Johnson, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000).

To establish standing, a plaintiff must show (1) that it has sustained a distinct and palpable injury, (2) that the injury was caused by the challenged conduct; and (3) that the injury is one that can be addressed by a remedy that the court is empowered to give. City of Chattanooga v. Davis, 54 S.W.3d 248, 280 (Tenn. 2001). To be clear, the focus in a standing analysis focuses on the party, not the merits of the underlying claim.

In the present case, Mr. Tulis has brought this action as "next friend" of Ms. Massengale, and attached an affidavit whereby the Defendant named him as "next friend." However, the Court finds that there is no basis for this Defendant to be appointed a next friend absent some showing that she is an infant or otherwise incompetent.

The civil code is replete with examples in which a person can be named "next friend" for an individual who is incapable of proceeding on their own behalf. *See T.C.A. §20-12-128; T.R.C.P. 17.03.* In each instance, there must be a showing that the injured party has been adjudicated incompetent or is an infant, as well as a Court order naming the next friend or guardian who can act on their behalf. It is insufficient for an alleged injured party to simply name another citizen as next friend to take up legal action on her behalf.

Accordingly, having considered the filings in this matter and the record as a whole, this Court finds no authority for a circuit court judge remove a criminal proceeding from the jurisdiction of the general sessions court, and therefore this Court lacks jurisdiction to grant the relief requested. In addition, the Court finds that Mr. Tulis does not have standing to file a petition on behalf of any person other than himself. Mr. Tulis has not established a sufficient personal stake in the outcome of Ms. Massengale's criminal charges to have standing to file this action on his own behalf. Likewise, he has not been authorized by this or any other court to act as her "next friend" for purpose of filing suit. Defendant's "appointment" of a next friend is insufficient in the eyes of the law.

Therefore, for the reasons stated herein, the *Affidavit and remonstrance in re Tamela Grace Massengale false imprisonment & false arrest; Petition for Writ of Certiorari* is respectfully **DISMISSED.**

Filed Electronically by the Second Division on ***Tuesday, June 4, 2024***

It is so ordered.

Enter.

AMANDA B. DUNN, Judge

Filed Electronically by the Second Division on ***Tuesday, June 4, 2024***

State of Tennessee
Office of the District Attorney General
11th Judicial District

Coty G. Wamp
District Attorney General

Hamilton County Courts Building, Third Floor
600 Market Street • Chattanooga, Tennessee 37402

Telephone
(423) 209-7400

May 6, 2024

David Tulis
10520 Brickhill Lane
Soddy Daisy, Tennessee
37379

Attention: David Tulis

This letter serves as a notice and warning from the Hamilton County District Attorney's Office regarding your unauthorized practice of law in case no(s). 1941912 and 1941913 in the General Sessions Court of Hamilton County, Tennessee.

Currently, the District Attorney's Office does not plan on charging you with the unauthorized practice of law under Tenn. Code Ann. § 23-3-103 for the filing of your "Notice of petition for petition for writ of certiorari." However, future violations of this statute on your part will lead to criminal charges under this section and any other applicable sections of the Tennessee Code Annotated.

To ensure your understanding, attached to this letter is a brief memorandum of law regarding the practice of law and your claimed "next friend" status.

Please take the time to review this memorandum.

Sincerely,

Coty G. Wamp
District Attorney General

State of Tennessee
Office of the District Attorney General
11th Judicial District

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Memorandum of Law Re: Unauthorized Practice of Law

The practice of law without having been duly licensed by the Tennessee Bar Association is made illegal by Tenn. Code Ann. § 23-3-103. The relevant parts of this law state:

> **(a)** No person shall engage in the practice of law or do law business, or both, as defined in § 23-3-101, unless the person has been duly licensed and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both.

Tenn. Code Ann. § 23-3-103(a). The "practice of law" is defined as:

> the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

Tenn. Code Ann. § 23-3-101(3). Violation of Tenn. Code Ann. § 23-3-103 is a Class A Misdemeanor, punishable by up to 11 months and 29 days in jail as well as a civil penalty no greater than $10,000 per violation.

You have claimed that this statute does not apply to you "because [you] are a journalist and not making money with a law business or practice, nor am I being paid."[1] To address the first issue, there is no journalistic exception to the unauthorized practice of law statute. Journalists may be prosecuted for this conduct the same as anyone else.

Second, you claim that you are not operating a law business or practice. This would indeed indicate that you would not be charged under the "law business" portion of Tenn. Code Ann. § 23-3-103(a). However, if you refer to the above-quoted statutes, you will see that the drawing up and filing of your "Notice of petition for petition for writ of certiorari" qualifies as "drawing of papers, pleadings, or documents" on behalf of another individual. Furthermore, you have held yourself out repeatedly as "representing" Tamela Grace Massengale, which is indicative of your

[1] https://tntrafficticket.us/2024/05/ministry-update-christian-mercy-labor-under-judge-threat/

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unauthorized practice of law. This claim of representation has been witnessed by members of our office, by the Court, and in writing on your website.[2]

Memorandum of Law Re: "Next Friend" Doctrine

The "Next Friend" doctrine is a rarely asserted doctrine asserted by common law through which a person who is incapacitated, mentally incompetent, or suffering from another such disability, is assisted in legal proceedings by the "next friend." This doctrine is most often asserted during federal habeas corpus proceedings during which a person may seek a writ of habeas corpus on behalf of a detainee when the detainee cannot do so themselves. *See Whitmore v. Arkansas*, 495 U.S. 149, 163-65 (1990).

A "next friend" is not entitled to an automatic presumption of standing. *Id.* at 163. Instead, for a "next friend" to be granted standing to pursue an action on behalf of another person, there are two requirements: (1) the "next friend" must provide an adequate explanation – such as inaccessibility, mental incompetence, or other disability – why the real party in interest cannot appear on his own behalf to prosecute the action; and (2) the "next friend" must be truly dedicated to the bet interests of the person on whose behalf he seeks to litigate. *Id.* at 163-64. It is also suggested that the "next friend" must have "some significant relationship" with the real party in interest. *Id.* at 164. The burden is on the "next friend" to establish the propriety of his status and to justify it to the court. *Id.*

Tennessee does recognize the "next friend' doctrine in some contexts. *Holton v. State*, 201 S.W.3d 626 (Tenn. 2006) (indicating that a "next friend" may pursue a post-conviction relief claim under narrow circumstances if the "next friend" shows an inmate's present mental incapacity"); *Reid v. State*, 197 S.W.3d 694 (Tenn. 2006) (in which a "next friend" or guardian ad litem may be appointed to pursue an action of post-conviction relief on behalf of an incompetent person). In the civil context, the "next friend" doctrine is most commonly asserted in the context of a minor child's interests being represented by a parent or close family member. *See Effler v. Purdue Pharma L.P.*, 614 S.W.3d 681 (Tenn. 2020); *Nelson v. Myres*, 545 S.W.3d 428 (Tenn. 2018); *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166 (Tenn. 2011).

[2] "Now, serving as counsel and next friend of Miss Grace, Judge Ables threatens to harm me under the UPL law." https://tntrafficticket.us/2024/05/ministry-update-christian-mercy-labor-under-judge-threat/.

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The Tennessee Supreme Court has established a standard by which a person may act as a "next friend" in a criminal law context. The "next friend" must do the following:

> First, a "next friend" must provide an adequate explanation — such as inaccessibility, mental incompetence, or other disability — why the real party in interest cannot appear on his own behalf to prosecute the action. . . . Second, the "next friend" must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate . . ., and it has been further suggested that a "next friend" must have some significant relationship with the real party in interest.

Reid ex rel. Martiniano v. State, 396 S.W.3d 478, 489 (Tenn. 2013); *Holton*, 201 S.W.3d at 632 (quoting *Whitmore*, 495 U.S. at 163-64). Furthermore, the person seeking to be "next friend" must make a *prima facie* showing of incompetence of the real party by attaching to their petition affidavits, depositions, medical reports, or other credible evidence that contain specific factual allegations showing the petitioner's incompetence. *Holton*, 201 S.W.3d at 634. The standard of showing incompetency for the purpose of determining whether a "next friend" has standing is the same as the civil competency standard. *Reid ex rel. Martiniano*, 396 S.W.3d at 489 (using the civil standard for incompetence espoused in *State v. Nix*, 40 S.W.3d at 463). The trial court must hold a hearing on such a petition to determine whether the defendant is incompetent.

Absent full and total fulfillment of these requirements means that a person may not act as a "next friend" to a defendant in Tennessee.

Your petition skipped several steps in this process. You are not entitled to claim "next friend" status without going through the proper procedure as established by the Tennessee Supreme Court.

TENNESSEE CASES

—WITH—

Notes and Annotations

BEING REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF TENNESSEE, NOT HERETOFORE REPORTED, AND ALSO THE CASES CONTAINED IN THOMPSON'S CASES AND THE LEGAL REPORTERS NOT REPORTED IN THE REGULAR SERIES OF TENNESSEE REPORTS

—BY—
ROBERT T. SHANNON
Of the Nashville Bar

IN THREE VOLUMES

VOLUME III

PUBLISHERS
THE BALDWIN LAW BOOK COMPANY
Incorporated
LOUISVILLE, KENTUCKY
1916

with the law. The testator might have used the words, "home tract," or "home place," or "the tract of land on which he resides"—or words of boundary or other words designating more certainly his intention.

But the will speaks from his death—and he does not use the words, my homestead—but "my wife's homestead," which we think indicates his intention to let the law carve out the homestead for his wife, and that he used the words, "my wife's homestead" in their technical sense, meaning the land, mansion, and its appurtenances which the law secures to her.

We therefore hold that the chancellor erred in his construction of this clause of the will, or so much thereof as undertakes to declare what the testator meant by the use of the word homestead.

In all other respects than as herein indicated the decree will be affirmed. The costs will be paid by complainant out of the trust fund in his hands.

DISSENTING OPINION.

Turney, J., delivered a dissenting opinion, saying: I dissent from so much of the opinion as disposes of the question of homestead.

JOHN W. PHILLIPS v. W. G. LEWIS, TAX COLLECTOR, ETC.

Nashville, January Term, 1877.

1. CONSTITUTIONAL LAW. Constitution supreme law of the land, and constitutional questions demand grave consideration.

Constitutional questions in a republican form of government like ours, always demand grave consideration. The constitution of our state is not to be lightly esteemed, but must be held, both in great and small matters, to be the supreme law of the land. (Pp. 237, 251.)

2. SAME. Freedom guaranteed, and limitations imposed.

Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents as well as upon themselves through their representatives in our legislature, which cannot be disregarded. (P. 237.)

3. SAME. Legislative power unlimited except as forbidden by the constitution; limitations imposed are imperative, and acts violative thereof are void.

It is true, as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people representing as it does the sovereign will of such a people, except what is expressly or by fair implication forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land, which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature and in violation of the embodied will of the people as expressed in their constitution of government. (P. 237.)

4. SAME. All laws to be constitutionally tested, and if forbidden by the constitution, to be held void.

Every act of the legislature, when before our courts for interpretation or application, must be brought to the test as to whether its provisions are in accord with the requirements of the constitution. If the law be forbidden by that instrument, the enactment must be held void, regardless of all other considerations. (P. 238.)

5. SAME. Ownership of property cannot be taxed as a privilege, but the business in which it is used may be taxed as a privilege.

The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege, and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value. (P. 245.)

6. SAME. Same. Dogs may be taxed as other property, but the ownership of them cannot be taxed as a privilege.

Dogs are property, and under the constitutional provision that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state," dogs may be taxed as such, if taxed according to value as other property, but they cannot be taxed at so much per head for the privilege of keeping them, regardless of value. A dog is property, notwithstanding the fact he is not property of general use, or has no market value. (Pp. 245, 246.) [In the case of the State v. Brown, 9 Bax., 53, 56, it was held that a dog, if he have

an owner, is personal property, and if of any value, is the subject of larceny. See Wheatley v. Harris, 4 Sneed, 468; Citizens' Rapid Transit Co. v. Dew, 16 Pickle, 322, 325; Sentell v. Railroad, 166 U. S., 698 (L. ed., Book 41, p. 1169.]

7. SAME. Same. Same. An enactment taxing dogs for the privilege of keeping them is unconstitutional and void.

A revenue act declaring the keeping of dogs a privilege, and taxing the owner or harborer of dogs so much per head for the privilege of keeping or harboring them, is a tax on the simple ownership of property, or the harboring of it, as a privilege regardless of value, and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon a vocation, calling, or pursuit as a privilege, and is therefore unconstitutional and void. (Pp. 238, 239.)

Cited and held unconstitutional: Act 1875, ch. 67 [repealed by act 1877, ch. 8].

8. STATUTES. Body of act may show one of two objects in title thereof to be the leading object and the other the incident or result.

Where the title of an act is "An act to increase the revenue of the state, and to encourage wool growing," it indicates two objects, namely, the increase of state revenue and the encouragement of wool growing; but where the body of the said act shows that the leading object is the increase of the revenue of the state, and that the encouragement of wool growing is only an incident or probable result of the leading object of the enactment, the act must be treated as a revenue act, one in which the legislature intended and has exercised the taxing power, and not an act in the appropriate exercise of the police power of the State. (Pp. 237, 250.)

Cited and construed: Acts 1875, ch. 67 [repealed by act 1877, ch. 8].

9. PRIVILEGES. Definition of the term "privilege" as used in the state constitution.

The settled judicial construction, interpretation, and definition of the term "privilege" at the time of the adoption of our constitution in 1870, in which sense the term was used in that instrument, was, "the exercise of an occupation or business, which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license." The essential element of the definition is occupation and business, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuits, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself, or the mere ownership of it. (Pp. 242, 243.)

Cited with approval: Mabry v. Tarver, 1 Hum., 94; Cate v. State, 3 Sneed, 121; State v. Schlier, 3 Heis., 283; French v. Baker, 4 Sneed, 193 [see Robertson v. Heneger, 5 Sneed, 258; Columbia v. Guest, 3 Head, 414; Jenkins v. Ewin, 8 Heis., 475; Clarke v. Montague, 3 Lea, 277; Dun v. Cullen, 13 Lea, 294; Railroad v. Harris, 15 Pickle, 702].

Cited and construed: Code (1858 and T. & S.), sec. 550; M. & V. Code, secs. 604, 617; Shannon's Code, secs. 692, 712.

10. SAME. Same. Legislature cannot declare anything else not included in the definition a privilege and tax it as such, and destroy ad valorem and uniformity of taxation.

To assume as correct the proposition argued, that whatever the legislature shall so declare is a privilege, is to make the clause of the constitution, providing that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state" (const., art. 2, sec. 28) as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then this clause of the constitution is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question so that in fact anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the said clause under consideration. (Pp. 244, 245.)

11. SAME. Actually issued license or tax receipt only evidence of the grant of the privilege, and not an essential feature of it.

It seems that it is not an essential feature of a privilege that an actual license be issued to the party, for it is only the evidence of the grant of the right to follow the occupation or business, and while the usual and perhaps universal incident to such grant, yet a tax receipt even is or may be the evidence of the grant; still the thing declared to be a privilege is the occupation or business, the license but the incident to its engagement, prescribed by statute, assuming, however, that the license in one form or the other is to be had. (P. 243.)

12. POLICE POWERS OF THE STATE. Different from taxing power, though taxes may tend to reach same end in some cases.

The police power of the state is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. (P. 246.)

13. SAME. Same. Privilege and license laws not an exercise of police powers, when.

Where revenue is the leading object of the privilege and license laws, though they may, as a mere incident or result thereof, to some extent, in some cases, as in that of the sale of intoxicating liquors, check or prevent the business, it does not follow that because this effect may in some

degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state. (Pp. 250, 251.)

14. SAME. Based on certain maxims.

The police power of the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individuals or a class of individuals is to be made subservient to the higher interest of the whole or a majority of the people of the state, whenever the minor interest shall conflict in the judgment of the legislature with that of the greater. (Pp. 246, 247.)

15. SAME. Same. Principle on which founded.

The police power of the state is a principle growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. (P. 247.)

Cited with approval: Commonwealth v. Alger, 7 Cush., 53, 84, 85.

16. SAME. May be exercised in the suppression, repression, and regulation of dogs, and in other instances.

In the exercise of the police power of the state, the legislature may, by a proper enactment, declare the keeping of dogs a nuisance, or limit the number to be kept, or particular species of them with known tendencies to do injury by devouring sheep; it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever kind of regulation or requirement in this direction that may be adequate to the end to be attained; for instance, the protection of that valuable and increasing industry, wool growing, in our state. Several instances of the exercise of the police power are given in the text and authorities cited. (Pp. 247, 249, 251.) [Our statues against sheep killing dogs. See Shannon's Code, secs. 2871-2873, 6527, 6528.]

Cited and construed: Acts 1875, ch. 67, sec. 4; acts 1865-66, ch. 3, sec. 1; T. & S. Code, sec. 4665a; Shannon's Code, sec. 6527; M. & V. Code, sec. 5428.

Cited with approval: Cooley's Const. Lim., 572 et seq., 594, 593 (6th ed., 704 et seq., 712 et seq., 739-741); 100 Mass., 136.

17. SAME. No destruction of property without a previous adjudication.

Except in the well known cases, recognized at common law, of great emergencies, such as the demolition of a house in a city to check the progress of a fire, etc., neither dogs nor any other property shall be destroyed without a previous adjudication to that effect. In the case of the destruction of any property, with the exception stated, the rule of the constitution of our state must be followed, which is that "no man shall be . . . deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land." (Pp. 243, 249, 250.)

Cited and construed: Const., art. 1, sec. 8 [see art. 1, sec. 21, and art. 11, sec. 8].

Cited and disapproved as to destruction of dogs without previous adjudication: 100 Mass., 136.

18. SAME. Same. "The law of the land" and "due process of law" defined.

The phrase "the law of the land," as used in the constitution, is equivalent to the phrase "due process of law," and does not mean a statute passed for the purpose of working wrong, for such construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense, and would but be to say to the legislature, "You shall not do the wrong, unless you choose to do it;" but the meaning is, that no member of the state shall be disfranchised or deprived of any of his rights and privileges, unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights, before he can be deprived of them. It cannot be done by mere legislation, but only by adjudication, with the well known exception mentioned and referred to in the last syllabus. (Pp. 243, 249, 250.) [See Const., art. 1, sec. 8, and notes, and Henley v. State, 14 Pickle, 667.]

Cited with approval: Taylor v. Porter, 4 Hill (N. Y.), 140; Sedgw. on Const. and Stat. Law, 478 et seq.

FREEMAN, J., delivered the opinion of the court:

This suit is brought to recover from the tax collector of Giles county, two dollars paid as a tax on two dogs, one by the agreed case is the property of Phillips, the other is a "stray dog" of no value, which was on the plaintiff's premises, and harbored by plaintiff. The tax was paid under protest, and this suit brought, no doubt, for the purpose of testing the question of the constitutionality of the act of the legislature on this subject.

The act of the legislature of March 22d, 1875 [Acts 1875, ch. 67], is as follows: Section 1. "That hereafter the keeping of dogs shall be a privilege, which shall be taxed as follows: Every owner or harborer of a dog or dogs shall pay one dollar on each dog; for the privilege of keeping a bitch the owner or harborer of the same shall pay a tax of five dollars for each bitch so kept except spayed bitches, which shall be taxed as other dogs, to be collected and paid into the treasury as other moneys by the revenue collector."

Section 2 provides for the enumeration and assessment by the tax assessor of the dogs and bitches in their districts at the time he assesses other property, and that the revenue collector shall collect the taxes so assessed. Each person is requested to state on oath to the assessor the number and kind of dogs owned by himself.

The third section of the act makes it a misdemeanor to fail to pay the taxes so assessed within ten days after demand made by the tax collector or his deputy, and on conviction, he is to be fined not less than five dollars and costs for each dog or bitch not paid for, with a proviso that the party may be relieved from payment of the tax by immediately killing the dog upon demand made for the tax. These are all the provisions bearing on the question before us.

It might seem at first glance that this is a case of small importance, involving, as it does, but the paltry sum of two dollars, but upon consideration it will be readily seen that it involves not only large interest to the state, but also to the people who pay the tax. It is stated by the attorney-general that an assessment of $266,000 has been made on the dogs of the state, from which has already been derived to the treasury the sum of $120,000. These figures show the gravity of the questions presented in this aspect. In addition, the case presents several grave constitutional questions as to the powers of the legislature

that (to say the least of them) are not of ready solution. Constitutional questions in a republican form of government like ours, always demand grave consideration. Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents, as well as upon themselves, through their representatives in our legislature, which cannot be disregarded. It is true as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people, representing, as it does, the sovereign will of such a people, except what is expressly, or by fair implication, forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature, and in violation of the embodied will of the people, as expressed in their constitution of governments. With these views of the gravity of the questions before us, we proceed to their solution.

It is obvious from the sections we have quoted that this act must be treated as a revenue bill, one in which the legislature intended and has exercised the taxing power. The title of the act is, "An act to increase the revenue of the state, and to encourage wool growing," thus indicating so far as this goes, two objects, the leading one, however, the increase of the revenue of the state. The body of the act shows the other object was deemed but an incident or probable result of the leading object of the enactment. The first section emphatically declares the keeping of dogs a privilege, and then proceeds to prescribe the amount of tax to be paid on this privilege, and the money should be

paid into the treasury as other revenue collected by the revenue collector.

In each of the sections it is spoken of as a tax, and the mode of payment provided for. It is true the fourth section provides for another and different end—that is, the punishment of persons who knowingly keep sheep-killing dogs, but this does not and could not change the entire character and purpose of the main body of the act. This being the undoubted character of the law before us, the question is whether its provisions are in accord with the requirements of the constitution. If forbidden by that instrument, the enactment must be held void regardless of all other considerations. To this test, every act of the legislature must be brought when it is before our courts for interpretation or application.

We need not say that it does not purport to be a tax on the dog as property, for in that case the rule of the constitution is plain, that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state." [Const., art. 2, sec. 28.] We have held that a dog was property in our state, and we must treat the case in this view. [See State v. Brown, 9 Bax., 53; Wheatley v. Harris, 4 Sneed, 468.] The tax is what it purports to be, a privilege tax—that is, a grant of a right of certain conditions to do what is otherwise prohibited, and we must decide the question at present on that aspect of it.

The language is that hereafter the keeping of dogs shall be a privilege which shall be taxed as follows, etc. In this view of the question, the real point presented is whether the simple ownership of property of any kind can be declared by the legislature a privilege, and taxed as such, for if it can be done in the case of a dog it may be done in the case of a horse, or any other species of property. It is clear this is what is done by this statute, except that

it has even gone further, and taxed a party who shall harbor or give shelter to a cur on his premises. This latter privilege, we take it, is one that will not be much sought after. But to the main question.

It is evident the words, "keeping of dogs," in the statute mean simply ownership, especially when taken in connection with the other provision making harboring them taxable, likewise showing definitely the purpose of the legislature to tax in the one case the ownership, in the other case a dog that was not owned but only harbored on the premises. We turn to the constitution, art. 2, sec. 28, for such limitations on the taxing power of the legislature as have been imposed by the people. After providing for uniformity and equality of taxation upon all property, according to its value, that value to be ascertained as the legislature may direct, it is provided: "But the legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct." It would seem clear that this was intended to fix definitely two different and distinct objects of taxation as well as modes. The first is property, which is to be taxed according to value. The second, merchants, peddlers, and privileges. These are different objects of taxation, evidently, and are to be taxed by a different rule—that is, in such manner as the legislature may direct. The ad valorem principle is excluded here and the manner of taxation left to the legislative will. It must be these two clauses have reference to different objects and prescribe for different subjects, or else the constitution has laid down a definite rule as to taxation of property in the first case, and then in the same clause has enabled and empowered the legislature to reject and utterly disregard that rule, by simply changing the name of the tax to a privilege tax, or tax on a privilege, and then taxing it in its own way, regardless of value. We take it, this is too clear to need further discussion.

This being so, we inquire what is the peculiar element or elements in the latter class of objects of taxation distinguishing them from property, the subject of regulation contained in the first clause of the section. We first take the language of the constitution, and then examine our decisions on the question for the solution of this question.

"Merchants, peddlers, and privileges," are the defined objects of taxation in the latter clause of the section. It is certain the merchant is not taxed except by reason of his occupation, and in order to follow or pursue this occupation—one of profit—in which it may be generally assumed capital, skill, labor, and talent are the elements of success, and are called into play by its pursuit. This pursuit or occupation is taxed, not as property, but as an occupation. Another element in this occupation is, that its object and pursuit is directed to a profit to be made off the general public, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital varied only in some of its incidents.

These occupations are taxed as such, and not on the ad valorem principle. So we take it the word privilege was intended to designate a larger, perhaps an indefinite class of objects, having the same or similar elements in them distinguishing them from property, and these objects were to be defined by the legislature and taxed in like manner as might be deemed proper. But the essential element distinguishing the two modes of taxation was intended to be kept up. That is the difference between property and occupation or business dealing with and reaping profit from the general public, or peculiar and public uses of

property by which a profit is derived from the community. If this distinction does not exist, then, as we have said, the constitution has fixed the rule of taxation with precision in the first clause imperatively, and that it shall be ad valorem, and in the subsequent and secondary clause and class of objects of taxation, have left the legislature free to utterly avoid the first by taxing the ownership of all property as a privilege. This cannot be the true interpretation of so solemn an instrument as the constitution of a state.

We now examine for a moment the leading cases decided by this court, to ascertain whether the principles we have stated do not underlie them, and whether they do not really sustain the views expressed. There may be and is found sometimes in the loose use of language or generality of terms apparent conflict with these ideas, but when taken in connection with the cases in judgment, and limited to the facts before the court, we think there will be found no real conflict in any of the cases with the view we have taken. The case of Mabry v. Tarver, 1 Hum., 94, was under the act of 1835 [Acts 1835–6, ch. 13, sec. 4], prohibiting the keeping, or rather, using the jackass for profit in the propagation of stock. Here it is clear it was the keeping of the animal, and using him for profit to be derived from the public in a particular manner, that was declared to be a privilege and taxed as such. It is not a tax on the jack, or for owning him or harboring him as the case before us, but a tax upon the particular public use to which he is put, that makes the element of privilege in that case. Judge Reese, in his opinion, keeps this idea steadily in his mind, for he says it is contended that this avocation is not in itself and its nature a privilege, and then goes on to say that it becomes one when declared by the legislature and forbidden to be exercised without license. He then replies to the argument that the legislature might declare farming a privilege and tax this class of

"pursuits and avocation," by saying the danger was remote, and the remedy to be applied by the people in the exercise of the elective franchise, and we may add no such danger can ever exist while we continue to be an agricultural people unless there should be a most imperative demand for it, and then the people would impose the privilege tax upon themselves through their representatives, and they may very safely be trusted not to tax themselves unnecessarily in this direction. But the point to be noticed is that the idea of a privilege in this case is attached to the avocation, the pursuit, and not the ownership simply of the land on which the avocation may be pursued. It would equally apply to the avocation, if followed on lands owned by another. The idea that the legislature should say that a man should not keep or own a farm without a license would be a reduction of the question at once to an absurdity. The citizen could at once point to the constitution and say it was his property, of which he could not be deprived except by due process of law, and that he held it by right, and could not be compelled to hold it by a license from any authority in the state, or from any department of its government.

The case of Cate v. The State, 3 Sneed, 121, arose under the same act of 1835, and the same idea runs through the case, the language used being less accurate and the reasoning less carefully expressed by Judge Caruthers, than in the case where the opinion was by Judge Reese. The State v. Schlier, 3 Heis., 283, was the case of a party engaged in the avocation of photographing. In this case Chief Justice Nicholson cites the definition given a privilege from various preceding cases, as follows:

"The exercise of an occupation or business which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license," and says this was the settled judicial construction of the term privilege at the date of the adoption

of our constitution in 1870, and in this sense the term was used in that instrument. It is seen that the essential element of the definition is occupation and business, not the ownership simply of property, or its possession or keeping it. We may concede, as we understand the argument of the attorney-general to do, that an actual license issued to the party is not an essential feature of a privilege, but is only the evidence of the grant of the right to follow the "occupation or pursuit," and the usual and perhaps universal incident to such grant, or that a tax receipt is, or even may be the evidence of the grant. Still, the thing declared to be a privilege is the occupation, the license but the incident to its engagement, prescribed by statute, assuming, however, the license in one form or the other is to be had. We think it would be impossible to hold, in any accurate sense, that a man could only be entitled to hold and possess his property, paid for with his money or earned by his labor, upon the condition of obtaining a license, either from the county court clerk, or a tax collector. His right is indefeasible under the constitution of the state. He can only be deprived of it by due process of law, or the law of the land as hereinafter explained. It is true his property may be sold if he fails to pay his taxes properly imposed, but this must be done under regular proceedings provided by law in such cases, and is in the nature of a sale under execution for the payment of a debt. The case of French v. Baker, 4 Sneed, 195, the question as stated by Judge Caruthers, page 196, was whether the occupation of a wholesale grocer was a privilege subject to taxation. It was held that it was. It is true in this case we have language used somewhat wanting in precision, and the reasoning not precisely accurate in assuming the test of privilege to be a declaration of that fact by the legislature, or the requirements of a license as an essential element, but when we look to the case before the court, and limit the generality of the

language to its facts, the same idea underlies this, as all the other cases in our state, that the 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. We need not go through the list of cases in our state on this question. It suffices to say that none of them vary the principles announced herein or found involved in the cases cited. When fairly construed in connection with their facts, all go on the idea of declaring the privilege to be in the exercise of the occupation, or in allowing something to be done, not in the enjoyment, possession, or ownership of property as such. We might go into a more elaborate discussion of this question, and meet the exceedingly able and acute argument of the attorney-general in detail, but we do not deem this necessary on this branch of the case, as it would swell this opinion beyond a reasonable length. The principle we have announced, based, as we think, on the true meaning of the constitution as understood by its framers, as well as the expositions given by our courts from 1835 down to the present time, abundantly demonstrate the incorrectness of his positions. We need but add that to assume as correct his main proposition, that whatever the legislature shall so declare is a privilege, is to make this clause of the constitution as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then the constitution, or this clause, is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question, so that, in fact, anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the clause under consideration.

We are aware that the distinction may be said to be

somewhat refined between taxing the occupation, avocation, or calling of a party by reason of his using his property in that calling or occupation, and taxing the property itself, as property, but the distinction is made in our constitution in very plain and emphatic language, repeatedly adopted as its proper interpretation by our courts, and we feel bound to maintain it as the supreme law of the land, which we cannot alter and dare not disregard. In support of the view we have taken of this bill as a revenue measure in its purpose, we may add here that it is so treated by all the parties to this case by paying the taxes, first, under protest, and second, bringing the suit for the amount so paid under the provisions of the act of 1873, and if these provisions had not been strictly pursued, we have no doubt but that the watchful attorney, who always sedulously and zealously guards the interest of the state, would have promptly interposed the bar of that statute against the right of the taxpayer to sue at all.

So much for this aspect of the case, in which we hold this law by its terms to be a revenue law, and a tax upon the simple ownership of property, by declaring it to be a privilege and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon an avocation, calling, or pursuit, all of which may be declared and have been so held privileges under our constitution.

The dog being property, may be taxed as a matter of course, under our view, as all other property, ad valorem, such value to be ascertained in such manner as the legislature may direct. We omitted to notice the fact, and add it here, that the language of our statutes creating privileges, as well as their subjects, is based on the view we have taken. For instance, the code, sec. 550, says: "The occupations and transactions that shall be deemed privileges, and be taxed, and not pursued or done without license, are the following, etc. [See Shannon's Code, secs.

692, 712], then enumerating the various occupations, business, and callings that are made subject to the tax thus imposed, all of them involving the elements, in whole or in part, we have given in this opinion as the distinctive features of a privilege.

As to the objection that the dog is not a property of general use or having a market value, we may say that the particular use to which property may be put, or its value, or what may make the elements of its value, cannot change or affect the principle on which it is protected as such by the constitution. If it be property, whatever may be its uses or elements of value, or however small that value may be, it is still under the protection given by that instrument. Many articles might have no market value, yet no one would hesitate to claim they were not so protected, such as family pictures and many articles of like kind that might have no practical use and no market value, and therefore, not be real sources of revenue, on the principle of ad valorem taxation.

We now proceed shortly to notice the other aspect in which this case has been pressed upon our attention by the attorney-general and counsel who argued the case—that is, that the law is sustainable under the police power of the state.

This power is a very different one from the taxing power, as we think, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. This power in the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individual, or a class of individuals, is to be made subservient to the higher interest of the whole or majority of the people of the state whenever the minor interest shall conflict, in the judgment of the legislature, with that of the greater. It is well defined by Chief Justice Shaw, in Commonwealth v. Alger, 7 Cushing, 53, 84, 85, to be a "principle growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it [may be so regulated that it] shall not be injurious to the equal [enjoyment of others having an equal] right to the enjoyment of their property, nor injurious to the rights of the community. . . . . Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment [as shall prevent them from being injurious and to such reasonable restraint and regulations], established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." This was said in a case where parties had the right, by reason of ownership of uplands near the sea, and to the fee in adjoining flats, to erect wharves and other buildings thereon. The legislature fixed lines in the harbor of Boston, beyond which no wharf should extend, and declared any wharf extended beyond this point to be a nuisance. The party was indicted, however, for the nuisance and the conviction sustained, and the law held to be constitutional.

We need not go minutely into the various cases on this question. They all stand on the principle announced, though the particular circumstances of each case are variant the one from the other. Instances of the exercise of this power may be found in regulations requiring railroads to fence in their tracks to prevent destruction of stock, making them liable on failure for the value of all stock killed by their cars. See Cooley Const. Limt., 572 et seq. [6th ed., 704, et seq.; 712 et seq.]

As said by Mr. Cooley, Const. Limt., 594 [6th ed., 738, 739], "it would be quite impossible to enumerate all the instances in which the power is, or may be exercised, be-

cause the various cases in which the exercise by one individual, of his rights, may conflict with a similar exercise by others, or may be detrimental to the public order or safety, are infinite in number and in variety."

We will, however, from the cases before us, indicate some of the means which have been held constitutional and within the power of the legislature in other states, by which the ownership of property may be regulated, and restraints fixed upon such ownership so as to prevent injury to others, or detriment to great public interests to which such ownership must always be held subordinate. Numerous instances will be found in Cooley's Const. Limt., p. 595 [6th ed., 739–741], for the proper exercise of this power, and are familiar to our own jurisprudence. Such cases, too, as in themselves are not wrong, but are declared to be public nuisances because endangering the public health, public safety, and we may add, the same principle applies to that which is deemed injurious to any great public interest, and this to be judged of by the legislature. Mill dams may be abated or destroyed, church yards found detrimental to the public health, or in danger of becoming so, the keeping of gunpowder in cities or villages, the sale of poisonous drugs, allowing unmuzzled dogs to be at large when danger is apprehended from hydrophobia, and we may say, the same regulation might be applied in case of danger to any great public interest, such as sheep raising in our state. The author adds, "and, generally, it may be said that each state has complete authority to provide for the abatement of nuisances, whether they exist by the party's fault or not."

In Massachusetts, it has been held that a law [Act of 1867, ch. 130, sec. 7], was valid providing "that any person may, and every police officer [and constable], shall kill, or cause to be killed, all dogs [whenever or] wherever found, not licensed and collared according to the requirements of a statute, and this without previous adjudication,

and that an officer with a warrant for this purpose from proper authority, might even enter upon the close of an owner for this purpose. See 100 Mass. R., 136. We may say that this decision goes too far in one aspect, and there ought to be a judgment of a court of competent jurisdiction as to the improper possession of the property before it could rightfully be destroyed.

At any rate, from a brief summary of their results, it is clear from them all that the state may declare the keeping of this species of property a nuisance, or limit the number to be kept, or particular species of it, with known tendencies to do injury by devouring sheep; that it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; that it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under the control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever [character] of regulation or requirement in this direction [that may be] adequate to the end to be attained, the protection of that valuable and increasing industry, wool growing in our state.

To devise proper means in this direction is confided to the wisdom of the legislature representing the people and familiar with their wants. But in case of destruction of this or any other property, except in the well-known cases, recognized at common law, of great emergencies, such as the destruction of a house in a city to check the progress of a fire, etc., and under these limitations, the rule of the constitution of our state must be followed—that is, no man shall be deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land. [Const., art. 1, secs. 8, 21, and art. 11, sec. 8.]

This last phrase is but equivalent to "due process of

law," and is well defined in this respect by the supreme court of New York, as follows:

"The law of the land, as used in the constitution, does not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense." It would but be to say to the legislature, you shall not do the wrong unless you choose to do it. The meaning is, that no member of the state shall be disfranchised or deprived of any of his right and privileges, unless the matter shall be adjudged against him upon trial, had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights before he can be deprived of them. It cannot be done by mere legislation, but we add, only by adjudication, with the well-known exceptions referred to. Taylor v. Porter, 4 Hill, 140; Sedg. on Const. and Stat. Law, p. 478, et seq.

It is proper to say that another section of the act, not germain, however, to the main body of it, contains an apt illustration of an appropriate exercise of this power, by making it a misdemeanor, knowingly to keep a sheep-killing dog, and upon conviction upon presentment or indictment, imposed a fine of twenty-five dollars on the person so convicted.

The act of 1865–6, ch. 3, sec. 1, had provided a similar remedy which was in force when the law under discussion was passed, but we suppose was not observed by the legislature at the time. See T. & S. Code, sec. 4665a [Shannon's Code, sec. 6527].

It will readily be seen from this review of the principles that underlie the police power, as well as the cases on the subject, that this statute is not in accord with them, so far as the provisions for taxation are concerned. In fact the law was not framed with that view, but purely as a revenue measure, no doubt intending as one of the results, however, to be secondary to the first, to lessen the number of dogs

in this state, but this secondary end which might or might not be the result, cannot bring the tax imposed within the requirements of the constitution, and the means used are not the appropriate ones to that end.

It is proper, perhaps, before we close, to refer to one other argument presented. That is, that our license laws in some cases, as in that of selling spirituous liquors, were intended to check its sale. This may be, and is no doubt, to some extent, a secondary result of the law, but the leading one [object] is revenue.

But it is clear, this is only an incident to such a law. We have but to look at the list of occupations made privileges to see that this is not the general object of such laws. For instance, merchants, telegraph companies, artists, and photographers. These occupations were certainly not intended to be checked or lessened by declaring them a privilege, and taxing them as such. It does not follow that because this effect may, in some degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state, especiallly when we see the leading object to be revenue. But we need not further pursue this discussion. The result is, that the law before us must be held void as a revenue measure or tax imposed in violation of the limitations of our constitution, and not sustainable under the police power of the state, because not so purposed in the first place, and, second, because not using the appropriate remedies for the exercise of such power. However lightly we may esteem the animal subject to this tax, the constituion of our state is not thus lightly to be esteemed, and must be held, both in great and small matters, to be the supreme law of the land.

Let the judgment be reversed, and proper judgment be entered here.

DISSENTING OPINION.

McFarland, J., delivered a dissenting opinion, as follows:

I did not hear the argument in this case, and it is not my purpose to enter into an elaborate discussion of the question.

I would not doubt the correctness of the conclusions reached by the opinion of the majority, if dogs are to be regarded as property in the same sense and to the same extent as other property. I agree that as to all property recognized as such by the common law, and intended to be protected by our constitution, that it would not do to hold that the legislature might declare it a privilege to own such property and tax the privilege. But by the common law the citizen was regarded as having only a base or qualified property in dogs; it was not larceny to steal them, and I have not been able to see that this has been changed with us, or the status of the animal in any manner changed, although the majority of the court have recently held that a dog may be the subject of larceny; that our statutes change the common law on this subject, an opinion in which I did not concur [State v. Brown, 9 Bax., 53]. It has been often held that the owner may maintain an action of trespass for killing his dog, and to this extent property in them has been recognized, and they have, no doubt, some value. [Wheatley v. Harris, 4 Sneed, 468.]

But they certainly do not stand in the same attitude as other domestic animals. They have no market value. They are not bought and sold in the market, as horses, cattle, and sheep. If the legislature were to undertake to comply with the positive mandate of the constitution, requiring all property to be taxed, and to tax them as property according to value, it would probably be found impracticable to find any means of ascertaining their value.

They are not among our people used for food; they are not, in general, raised and sold for profit.

In short, while to some extent useful, they were not regarded by the legislature as a species of property essential to the general prosperity of the state. On the other hand, they were regarded, as to some extent, dangerous to other property, and likely, with their increasing numbers, to become a public nuisance.

In this view, the law in question was passed for the purpose of diminishing the number, and discouraging their future increase. I have no doubt that under the police power, the legislature might, for the general good, accomplish this purpose in some form. While the law is styled a revenue law, it provides that in every instance the tax levied may be satisfied by the destruction of the dog, showing the latter to have been the primary object.

Regarding the purpose aimed at by the legislature as clearly within their power, and the object accomplished as undoubtedly legitimate, I should not be overly technical as to the mere form in which it was accomplished, whether it be called taxing a privilege or enforcing by penalty proper police regulations, when I can see that no substantial constitutional right has been violated. I am in favor of a strict enforcement of all constitutional restrictions for the protection of substantial rights, but I am not in favor of so construing these restrictions so as to make them obstacles in the way of accomplishing needful and proper legislation, and I do not suppose that the framers of the constitution ever imagined that they were placing these animals beyond the power of their own representatives.

No law should be declared void by the courts unless clearly in violation of some positive restriction of the constitution.

EXHIBIT 9

OFFICE OF THE TENNESSEE ATTORNEY GENERAL
COMPLAINT FORM
UNAUTHORIZED PRACTICE OF LAW

Please return this completed form to:
STATE OF TENNESSEE
Office of the Attorney General
Consumer Protection Division
Attn: Unauthorized Practice of Law
P.O. Box 20207
Nashville, TN 37202-0207
Facsimile: (615) 532-2910

Please carefully print or type all your responses in blue or black ink. Additionally, please respond to all questions on the front and back of this form.

IMPORTANT: Please note that this form is not confidential and may be disclosed if requested under the Public Records Act or during the course of litigation (if any). As a result, you should remove any social security numbers or bank account numbers before submitting this form.

Today's Date:

1. **Your Name**: (Mr./Mrs./Ms.) Circle correct response

_____
First Name Middle Name Last Name

Address: _____
Full Street Address City State Zip Code

County: _____

Telephone number: Day_____Evening_____Cell_____

Best time to contact you: _____

2. **Who is your complaint against?**

_____
First Name Middle Name Last Name

_____
Company name, if applicable

3. **What is their complete address and telephone number?**

_____
Full street address City State Zip Code

(_____) _____
Area code Telephone Number

4. **Does the person listed in #2, have a license to practice law?** If yes, please list the state(s) that issued the license(s): _____

5. **Please describe your complaint in detail. Please use chronological order (by dates) and include as many actual dates as possible. Attach copies of any papers or documents (receipts, advertisements, contracts, letters, front and back of canceled checks) you have available and which relate to your complaint. Please attach a separate sheet of paper if necessary. DO NOT MAIL ORIGINAL DOCUMENTS; THESE WILL NOT BE RETURNED.**

6. **Have you tried to work with the person/entity to resolve your complaint?**

☐ yes ☐ no If yes, please explain in detail, including their response. Please attach a separate sheet of paper if necessary.

7. **Is the person you have described in your complaint still engaging in activity similar to your complaint?**

☐ yes ☐ no If yes, please explain in detail. Please attach a separate sheet of paper if necessary.

8. **In which county did the facts described above occur?** _____
(County)

9. **Did you pay money as a result of the complaint described in #5?**

☐ yes ☐ no If yes, how much? $_____

To whom did you pay the money? _____

10. **Did you receive services in exchange for your money?**

☐ yes ☐ no If yes, what did the person or company listed in #2 do for you? Please attach a separate sheet of paper if necessary.

11. **Have you had difficulties with the services you received from the person or company listed in #2?**

☐ yes ☐ no If yes, please explain the difficulties in detail and discuss any monies lost as a result of those difficulties. Please attach a separate sheet of paper if necessary.

12. **What type of legal representation or services were you seeking or did you obtain?**

☐ Domestic Relations (divorces, child custody and adoption issues)
☐ Probate, Wills, Trusts and Estates
☐ Personal Injury
☐ General Business law (incorporations or the like)
☐ Worker's Compensation
☐ Criminal Law
☐ Immigration Law
☐ Tax Law
☐ Other _____

13. **Did you respond to an advertisement when selecting the person or company listed in #2?**

☐ yes ☐ no If yes, please provide a copy of the advertisement, if available. If not, please list where the advertisement ran or where you saw it.

14. **Have you filed a complaint with any other state, federal or local agency?**

☐ yes ☐ no If yes, please list the agencies you have contacted.

15. **Have you filed a private legal action against the person or company listed in #2?**

☐ yes ☐ no If yes, please provide your attorney's name, address and telephone number and attach a copy of the lawsuit.

_____ _____

Attorney's name Attorney's address

_____

Attorney's telephone number

16. **Are you aware of any other persons that have information about the events described in #5?**

☐ yes ☐ no If yes, please provide each person's name, address and telephone number where indicated below.

Name	Complete Address	Telephone Number

IMPORTANT: PLEASE READ CAREFULLY

Please retain a copy of this complaint and all documents for your files.

If you have been injured by a person engaging in the unauthorized practice of law, you have a limited time to sue under Tennessee law. Because the Office of the Attorney General does not represent private individuals, you should consult a private attorney regarding your legal rights.

Please be advised that completing this form does not protect your legal rights.

You may also want to report your complaint to your local District Attorney General and the Board of Professional Responsibility.

Please be advised that complaints submitted may be subject to the Public Records Act. As a result, you should redact any personal information such as social security numbers or bank account numbers prior to submitting this form.

My signature below indicates that the information given in this complaint is true and correct to the best of my knowledge and belief. I understand it may be used in legal proceedings or provided to the individuals and/or entities referenced in this form.

_____

Signature **Date**