David Jonathan Tulis Petitioner V. David Gerregano Commissioner of revenue Respondent	))))))))	Docket no. 23-004

Response in opposition to respondent's motion for summary judgment

> *Of course, an administrative body of this kind which is given legislative power to make rules and regulations does not have the power to make a rule or regulation which is inconsistent with the constitutional provision or other law on the subject, and it does not include the authority to enact laws, or to make rules affecting or creating substantive rights.*
>
> Tasco Developing & Building Corp. v. John R. Long,
> 212 Tennessee 96, 102, 368 S.W.2d 65 (1963)

Respondent's motion for summary judgment is a confession of sin. The commissioner asserts and wishes to suggest that the Tennessee financial responsibility law ("TFRL") in Part 1 "does not foreclose the subsequent creation of an entirely separate enforcement mechanism" for financial responsibility "requirements," an "independent basis for suspending vehicle registrations" (motion, pp. 8, 9).

Respondent claims independent authority not envisioned by the general assembly nor authorized by law. The current program abrogates and subverts the will of the general assembly, effectively placing a second set of hands on the steering wheel of the TFRL. Under our current statutory regime, privilege licensees fall under the supervision of the

department of safety ("DOSHS" or "safety") unless and until adjudicated "financially irresponsible" or "convicted" by the courts, at which time they go under the probationary oversight of department of revenue ("DOR" or "revenue") for up to five years before being released of obligation.

Respondent's interpretation of the law alienates or abrogates at least 29 statutory provisions. Petitioner's reading accounts for and allows the statutory puzzle pieces to fit neatly together into one seamless picture as envisioned by the assembly.

Respondent fails in his motion to acknowledge or countenance the plain and unambiguous language of T.C.A. § 55-12-214. **"Nothing in this part shall alter the existing financial responsibility requirements in this chapter,"** How does the commissioner explain the bureaucratic reach of subordinate employees within his department who impose greater administrative burdens absent specific statutory authorization by the general assembly? Tennessee citizens are at liberty to use the roads in accordance with the laws they have established for themselves. They are not subject to the caprice of unelected employees.

The commissioner insists that the petitioner purchase what he styles "acceptable insurance coverage" (see pp. 2, 3, 5). The law requires the petitioner to purchase "a certificate of insurance," a motor vehicle liability policy which is required to remain in effect during the probationary period of three to five years, depending on the reason for suspension or revocation. Such policy is subject to "immediate cancellation" at the "time after expiration of the period of suspension or revocation" if "the commissioner [of safety] has not received record of an additional conviction" T.C.A. § 55-12-125 Cancellation of bond or certificate of insurance. There you have it. After cancellation of SR-22 high-risk certificated policy, the licensee is as free as a bird again.

He's at liberty to drive without insurance unless he wants it, or can afford it.

4 sources of ‘independent’ authority

Respondent’s program rests on a simulacrum of legal authority – an AG opinion, legislative history quotations because of alleged ambiguity in the law, and three other misread statutory provisions.

1. T.C.A. § 55-5-117(b)(1)

This provision states:

> Nothing in chapters 1-6 of this title shall be construed to affect or change the power of the commissioner to revoke motor vehicle registrations under the financial responsibility law in chapter 12 of this title.

§ 55-5-117(b)(1)

The provision acknowledges the DOR commissioner has “power *** to revoke motor vehicle registrations” in chapter 12 and nothing in chapters 1-6 “affect or change” this authority. This fact is widely known and not contested. However, this provision doesn’t say how the grant of power operates under EIVS probation, but only in reference to the specified criteria relating to fraud, theft, or misappropriation. Under Part 1 of the TFRL, the power is exercised to suspend the license and tag of a person who is statutorily coerced and compelled into demonstrating ***future*** proof financial responsibility (“FR”) after having failed to do so on a prior occasion or after his first “bite of the apple.” This person, in other words, must have a “motor vehicle liability policy” per T.C.A. § 55-12-122, as defined in T.C.A. 55-12-102, definitions, where a certificate is required.

> “Motor vehicle liability policy” means an “owner’s policy” or “operator's policy” of liability insurance, **certified** as provided in **§ 55-12-120 or § 55-12-12**1 as **proof of financial responsibility**, and issued, except as otherwise provided in § 55-12-121 by an insurance carrier duly licensed or admitted to transact business in this state, to or for the benefit of the person named therein as insured

Tenn. Code Ann. § 55-12-102 (emphasis added)

T.C.A. § 55-5-117(b)(1) provides no support for respondent's claims.

2. **T.C.A. § 55-12-210(c)(2)**

> (c) If the owner of the motor vehicle fails to comply with the notice described in subdivision (b)(1)(B), the department of revenue: **** (2) **[s]hall suspend or revoke** the motor vehicle owner's registration;

Tenn. Code Ann. § 55-12-210(c)(2) (emphasis added)

This provision informs the department that if "the owner" of a motor vehicle doesn't comply (by maintaining payment on a *certified* policy), revenue "shall suspend or revoke" the registration. Respondent would have the AHO believe there is no condition precedent or antecedent particularities of the "owner" in view, but rather that merely owning an automobile places one under the EIVS probationary supervision. Respondent errantly suggests that petitioner's suspension is "within its statutory authority" under this provision. Paragraph (a)(1)(B) of this provision, however, specifically permits and allows an owner or operator to provide the department with a "proof of exemption" under § 55-12-106 of the chapter as an acceptable answer to the notice of noncompliance letter generated by the department. Upon receipt of this "proof," the department's inquiry ceases.

DOR claims it has an "independent basis for suspending a vehicle registration" and the petitioner conditionally agrees to the extent allowed by law. However, it is legal error to suggest that DOR enjoys new and independent authority apart from that body of law in Part 1 that defines the terms, conditions and scope of financial responsibility as a form of supervisory thumb-screw where the state administers tough love to licensees of the

driving privilege who have previously demonstrated financially irresponsible through adjudication. EIVS operations are constrained by **the chapter** (chapter 12) — not DOR *policy*, nor DOR *interpretation* of Part 2.

Sect. 210 creates no liability on petitioner. It merely gives revenue a protocol for revoking the registration of SR-22 policyholders who drop their policy during the probationary period of supervision by the respondent. Sect. 210 heralds petitioner's claims.

1. Reference to "evidence based on either the **IICMVA model** or the full book of business download process" brings in IICMVA, which authority pertains to SR-22 high-risk insureds who are working through periods of license and tag suspension. IICMVA focuses on SR-22 compulsory insurance on probationers.

2. The section cites "this chapter" in reference to a first notice, not merely "this part." DOR shall provide notice to the owner of the motor vehicle.

   > [T]he owner has thirty (30) days from the date of the notice to provide to the department of revenue: *** (B) Proof of exemption from the owner or operator's financial security requirements **under this chapter**

   55-12-210(a)(1)(B)

   Respondent's reliance on sect. 210 is misplaced. T.C.A. § 55-12-210(a)(1)(B) informs the respondent that Part 1 infrastructure controls Atwood. The liable parties in view are not petitioner and insurance industry **noncustomers**. Only the parties identified by safety's FR division, people with "certified" motor vehicle policies that need to be "verified" by

the electronic insurance verification system ("EIVS"). These parties are subject to "a period of suspension or revocation" under TFRL.

> Proof of financial responsibility may be furnished by filing with the commissioner [safety] the **written certificate** of any insurance carrier duly authorized to do business in this state, **certifying** that there is in effect a **motor vehicle liability polic**y for the benefit of the **person required** to furnish proof of financial responsibility.

§ 55-12-120. Certificates and certification (emphasis added)

3. Sect. 210 is the protocol provision directing how respondent is to send out notices to parties subject to revocation. It directs the commissioner to surveil the full book of business data contained in i3 Verticals' data mine; if he finds among subject parties "a motor vehicle is not insured, the **department of revenue *shall*,** or ***shall*** **direct its designated agent** to, provide notice to the owner *** " (emphasis added). Respondent contends, without basis, the word "motor vehicle" is ***<u>any</u>*** motor vehicle in the state. Respondent argues the word "shall" creates a liability not just on DOR, but every member of the general public who registers an automobile as a motor vehicle.

   Nowhere will the DOR sect. 210 claim withstand scrutiny when the law is read *in para materia*, with specific regard to the rule *ejusdem generis*, where "a more specific statutory provision takes precedence over a more general provision," with judicial rules noting "[a] construction which places one statute in conflict with another must be avoided" <u>Graham v. Caples</u>, 325 S.W.3d 578, 582 (Tenn. 2010) (emphasis added). Sect. 210 directs obligation upon one actor — the DOR.

SR-22 liability policies or other POFR are in view in sect. 210. *Denying the light of the chapter,* respondent demands petitioner obtain an SR-22 motor vehicle liability policy as defined in sect. 102, the only type of policy in view in Atwood. Relator is not under suspension by the department of safety, and respondent hasn't claimed that he is. Respondent citations to sect. 210 are arbitrary and capricious.

3. <u>T.C.A. § 55-12-139(a) and 139(c)(1)</u>

> This part shall apply to every vehicle subject to the registration and certificate of title provisions.

T.C.A. § 55-12-139(a)

So opens sect. 139, which DOR relies on to convert the TFRL into a mandatory insurance regime upon all licensees and registrants. "*See* [sect. 139] making compliance with [FR] mandatory for 'every vehicle subject to the registration and certificate of title provisions'" (p. 5). DOR asserts POFR obligations in Part 1 of TFRL ("this part" = Part 1) "shall apply" to 100 percent of Tennessee motor vehicle registrants, as if all were suspended. In other words, it is "abundantly clear" (p. 11) every Tennessean, including petitioner, is liable for performance apart from an order of suspension or revocation from safety following a breach of TFRL, court judgment, conviction or administrative ruling. T.C.A. § 55-50-501, Revocation; satisfaction of judgments.

Respondent hungrily finds other nuggets of authority in sect. 139 for its "independent" revocation scheme. The first is:

> (1) It is an offense to fail to provide evidence of financial responsibility pursuant to this section.

T.C.A. § 139(c)(1)

This phrase, respondent explains, "[provides] that failure to provide evidence of financial responsibility is a misdemeanor offense" (p. 5).

The second dry morsel is sect. 139(b)(1)(B), "in case of an accident for which notice is required," "the officer shall request evidence of financial responsibility" (p. 5 footnote).

"Taken together," respondent says, "these three provisions require registrants operating vehicles subject to registration on Tennessee roads to procure an adequate form of financial responsibility in advance of an encounter with law enforcement that would prompt an officer to request proof of financial responsibility" (p. 5 footnote). In other words, "that an officer may ask to see POFR means you have to have it."

Respondents postulate that a duty imposed upon an officer to ask a question creates a concomitant duty upon every member of the public "as subdivision (c)(1) makes it an offense to fail to provide proof of financial responsibility to an officer upon request, the only way for registrants to comply with the statute is to carry the requisite proof in their vehicles" (p. 5 footnote).

In a traffic stop, arrest or accident, the officer will take the person's driver license and check the DOSHS records of "required" parties. If the driver is required to have SR-22 motor vehicle liability policy on record, the driver is obligated to evidence his certificate as proof of financial responsibility. The certificate proves he personally is covered, the policy insuring him (or her). A certified policy is not applied to a motor vehicle, but a person.

Respondent *looks at the wrong thing* in his use of EIVS, looking solely at VINS and insurance customers. EIVS is currently being used to sniff out noncustomers of the industry (i.e., non-holders of non-certified policies, such as relator). EIVS was authorized

to monitor and "verify" only on certified policies. [1] On p. 3 of his motion, respondent cites department's notices demanding insurance proof. EIVS, indeed, is designed to **confirm** insurance coverage, but of those parties under Atwood with conditional privilege who'd agreed to buy and carry certified motor vehicle liability policies as defined at § 55-12-102(7), definitions.

DOR misconstrues the phrase "as required by this section" that, under the rules of statutory construction, does not create a duty. It is, rather, a savings clause, reference of condition or governor, as if to say, "in instances when required" or "insofar as is required" or "if the person is one who's required." The officer "shall request evidence of [FR] as required by this section," we read. *This section creates no more duty upon any member of the general motoring public than any other of the law's 57 sections*. No obligation upon 100 percent of the motoring public lodges materially § 55-12-139.

Even if "taken together," its provisions don't authorize punishment for a member of the general public with a "safe driver" record and not required to have a certified "motor vehicle liability policy" described in sects. 102 or 122.

A reference to what an officer must do creates no duty to "cure noncompliance" by buying an operator's or owner's policy from Grange or State Farm. Petitioner is not under suspension and has had no qualifying accident, the motion admits, denying him the privilege.

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[1] Atwood's purpose is "to verify whether the financial responsibility requirements of this chapter have been met with a ***motor vehicle liability*** **insurance policy** ***). § 55-12-202 (emphasis added). The fact the insurance policy in question is on file and approved by the Commissioner of the Insurance and Banking, pursuant to T.C.A. s 56—603, **does not make the policy a 'certified policy'** under our financial responsibility law. McManus v. State Farm Mut. Auto. Ins. Co., 225 Tenn. 106, 112, 463 S.W.2d 702, 705 (1971) (emphasis added)

Tenn. Code Ann. § 55-12-139 is about compliance with the financial responsibility rules in Part 1. Respondent is cannibalizing provisions in Part 1 to justify its "independent" operation of EIVS in Part 2. None of the sect. 139 parts "taken together" give respondent enough lift to escape the gravitational pull of TFRL on its EIVS utility. EIVS monitoring is stuck on the ground, looking only at those people that the department of safety directs, a long tail of ***suspendees*** who are released, per § 55-12-114, after punishment up to five years.

Respondent refers to "the general obligation to maintain some form of financial responsibility under Tenn. Code Ann. § 55-12-139" (p. 9 footnote). The "general obligation" is a fantasy, just as is the reference to an agentless, nearly magical "*subsequent creation* of an entirely separate enforcement mechanism for financial responsibility requirements" (p. 8), just as Aaron excuses the golden calf, appearing without agency. "And I said to them, 'Whoever has any gold, let them break it off.' So they gave it to me, and *I cast it into the fire, and this calf came out*" Exodus 32:24 (emphasis added).

4. Tenn. Op. Atty. Gen. No. 03-084 (Tenn.A.G.), 2003

A fourth authority is an opinion by the attorney general. Cited at length, respondent chops the quote just before the attorney general states how narrow the opinion purpose is. This edit is in bad faith and is misleading, a rule 8, rules of professional conduct, violation on the part of the commissioner's attorney. The omitted part: "This Opinion concerns the standards for showing evidence of financial responsibility **when an insurance policy provides the driver with coverage**." Tenn. Op. Atty. Gen. No. 03-084 (Tenn.A.G.), 2003, p. 2 (emphasis added).

Omitting a crucial part of an authority in this way is a Rule 8 violation for the commissioner's attorney, misleading a court when a proper citation would be in petitioner's favor.

'Flawed in several respects'

Respondent says petitioner's argument is "flawed in several respects" and "is simply not supported by the Part 1 authorities he cites."

Respondent hopes to mislead the AHO about § 55-12-214, financial responsibility requirements unaffected, "Nothing in this part shall alter the existing financial responsibility requirements in this chapter." The effort is only a little short of magnificent.

"Additionally, the Atwood Law does not limit is own application to vehicles involved in an accident. *** If the General assembly had intended to limit the Department's administration of the Atwood Law to vehicles involved in an accident and thus implicated under Tenn. Code Ann. 55-12-105(a), it could easily have done so" (p. 9). Respondent says there is "a lack of qualifying or narrowing language" that "leaves the EIVS inquiry open to any motor vehicle registered in Tennessee" (pp. 9, 10).

Respondent says DOSHS Part 1 duties in post-accident reporting "does not foreclose the subsequent creation of an entirely separate enforcement mechanism for financial responsibility requirements via the procedures established by the Atwood law in Tenn. Code Ann. 55-12-210. Both things are true — the Department is directed to suspend registrations for failure to comply with financial responsibility requirements post-accident at the request of DSHS and by the Atwood law where insurance cannot be verified and the registrant fails to show alternate [POFR] or otherwise cure noncompliance." Respondent continues, "Both may operate fully in parallel with the

other" and registrants are revoked "under an entirely different set of circumstances" (pp. 8, 9).

Respondent says revenue has initiatory authority to revoke tags (p. 8, footnote 4). It does have this authority – *and without a hearing* – but with a limit. A suspended registrant or licensee, in view in proper application of the law, is an SR-22 driver and operator who's already had his fair shake with a hearing in DOSHS, protecting his constitutional due process rights. If revenue revokes such a person without DOSHS notice, it is under qualification of a certified insurance policy accepted by suspendee as condition for privilege exercise, and tag revocation is proper, purely administrative, pre-agreed-to by the owner/operator with no hearing envisioned in Atwood.

Ambiguity claim

It's bizarre that respondent admits ignoring and not reading Part 1, then says it's ambiguous (Lanfair deposition transcript p. 6).

Respondent speaks of "plain language" (p. 7) and "clear terms" in the statute (p. 10), and accuses relator of alleging the language is "ambiguous" because his "conclusion [is] to the contrary" of the department's (p. 10).

Respondent says "clear terms" let the department ignore the certification requirement for motor vehicle liability insurance policies under T.C.A. § 55-12-120 and -122, but then resorts to legislative history to establish the law's import, quoting state Rep. Randy Rinks, Sen. Jim Tracy, Rep. William Lamberth and longtime safety bureaucrat Roger Hutto (pp. 10-13). Legislative history is the fifth authority cited by respondent. The hearing officer should reject these politicians' personal glosses as insignificant and focus on actual, clear authority.

"Indeed all of the government's legislative history is irrelevant, because '[e]xtrinsic materials' like legislative history 'have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of *otherwise ambiguous terms*. *** ('reference to legislative history is inappropriate when the text of the statute is unambiguous'); *United States v. Gonzales*, 520 U.S. 1, 6, 117 S.Ct. 1032, 137 L.Ed.2d 132 (1997) ('Given the straightforward statutory command, there is no reason to resort to legislative history'). And the government nowhere identifies the purportedly ambiguous terms — by which, of course, the Supreme Court means the ambiguous *words* — that its legislative history purports to clarify." United States v. Banyan, 933 F.3d 548, 553 (6th Cir. 2019) "[Legislative history] can be used to clarify an otherwise ambiguous statutory term, *Chevron,* 467 U.S. at 845, 104 S.Ct. at 2783, but it cannot be used to muddy an unambiguous statutory term." Bower v. Fed. Exp. Corp., 96 F.3d 200, 210 (6th Cir. 1996).

The department admits it ignores Part 1 of the law selectively. Thus the commissioner claims petitioner "did not articulate an available exemption from requirements" at sect. 210" with no explanation why any from a long list of exemptions in ^55-12-106 are not available, where two of the 15 exceptions could apply to petitioner to which he has made reasonable appeal.

The exemptions said to be "available" are that the vehicle is "no longer in the owner's possession" or not being used. Sect. 210(a)(1)(C) and (D). These are irrelevant to the case. Respondent capriciously rejects sect. 210(a)(1)(B) because it makes reference to "this chapter" as follows: "(B) Proof of exemption from the owner or operator's financial security requirements under **this chapter**."

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> Additionally, the Atwood law does not limit its own application to vehicles involved in an accident. Tenn. Code Ann. § 55-12-210(a)(1) directs the department to initiate its notice procedures "if there is evidence … that **a motor vehicle** is not insured" (emphasis added)

Motion p. 9

Respondent is correct that EIVS is not limited to spotting only people who got tags suspended from a qualifying accident and misbehavior thereafter under TFRL. The legislature does not narrow its operation in that way. EIVS operates on people who have suspended use of the privilege, for whatever reason the privilege is suspended, whether DUI or rules of road violations in other chapters of the title or for disobeying § 55-12-105. If these people have the privilege following suspension, and if they show POFR by insurance, they are under EIVS monitoring.

Absurdly, respondent says “the lack of any qualifying or narrowing language” as to how a person is suspended “leaves the EIVS inquiry open to any motor vehicle registered in Tennessee.” The law provides the “qualifying or narrowing langage” that constitute the search field parameters for EIVS. Petitioner has accounted for all such language in his motion for summary judgment.

In answer to injunction, respondent says sect. 210 “[directs] the Department to check vehicle registrations against insurance company records.” This statement implies a broad, wide and general review of “records.” Key in the terminology is the word “certified” and “motor vehicle liability policy,” distinct from ordinary operator’s or owner’s policies.

The sect. 139 revision in 2002 does not accomplish what respondent claims. “Although the law applies to “every vehicle subject to the registration and certificate of title provisions,” Tenn.Code Ann. § 55–12–139(a) (eff. Jul. 1, 2005), as we have previously explained, the Legislature stopped short of requiring public liability insurance as a condition precedent to the owning or operating of a motor vehicle. The sanctions of this statute are not involved unless and until the owner or operator is involved in an accident resulting in bodily injuries or property damage in excess of $[400.00]; until such occurs a

person is at liberty to own and operate a motor vehicle without any insurance coverage or with as little insurance coverage as desired. Purkey v. Am. Home Assur. Co., 173 S.W.3d 703, 706–07 (Tenn. 2005)

The commissioner points out that the clarifying language was to eliminate the apparent licensing requirement that sect. 139 earlier imposed on special mobile equipment such as forklifts and backhoes occasionally on the roads (p. 12).

To consolidate the understanding that the sect. 139 phrase implies 100 percent requirement on all drivers, respondent quotes Roger Hutto of safety saying, "The current law says every vehicle is subject to the financial responsibility laws. The amendment is really limiting this to vehicles that are required to be titled and registered ***." These edits make no change in the operation of the law. Hutto is correct in saying that TFRL and sect. 139 apply to registered vehicles. The rules of construction make clear a general statement in law is controlled in its meaning by earlier provisions limiting scope of operation.

'Rights not implicated by regulation'

Petitioner has defended his right to communicate, travel, locomote, self propel using the public streets in exercise of ingress egress rights partly to show how careless and vicious respondent is in the matter over which the AHO ostensibly has authority — privilege under TFRL.

If the commissioner is willing to deny any constitutionally guaranteed right to travel not implicated by regulation, as divided out in State v. Booher, 978 S.W.2d 953, he is willing to deny rights under the privilege and dig up and relocate landmarks circumscribing financial responsibility laws.

Revocation of the Honda Odyssey minivan's tag means the piece of personal chattel property is reduced to being merely an automobile. In the meantime, petitioner is suing to have the automobile reregistered for use as a motor vehicle. Petitioner's sitting in the automobile and traveling down the road, apart from the privilege, respondent says, over these months of litigation, is a crime.

Petitioner "alludes to purported 'right[s] of ingress and egress' with the implication that the Department's suspension *** infringes upon such rights," respondent say. He quotes the "sharp white line separating travel and transportation" paragraph from a relator filing and says it is "notable primarily for its lack of citation to any authority imparting the rights asserted therein." He ignores a 5-page administrative notice citing 13 cases on soil rights protected by the enjoyment of ingress and egress rights.

The Ingress-egress right "appears to be *** somewhat antiquated." He says Title 55 "does not address or recognize Petitioner's asserted rights or otherwise indicate that such rights impact the registration of his motor vehicle in any way. *** [F]or the Petitioner to drive his vehicle on an office property and over the streets and highways of this state, he must comply with Tennessee's laws addressing motor vehicle title and registration, including the Financial Responsibility Laws" (citation omitted) (pp. 14, 15). He cites Booher pointing out that "[t]he ability to drive a motor vehicle on a public highway is *not* a fundamental 'right.' Instead, it is a revocable 'privilege that is granted upon compliance with statutory licensing procedures" *Id.* at 956 (internal citations omitted).

The law agrees with the Booher court's distinction between driving and private travel. The acme of private travel, the case points out, is freedom to change domicile interstate. But many less dramatic types of travel in Booher are not implicated Or abrogated by Tennessee's privilege rules.

The commissioner blunders by saying the law "imparts rights." Law doesn't impart rights. It recognizes them as pre-existing the codified law as inherent and in the nature of any man, woman, or person made in God's image and free to live out God's commandments and his or per private genius, duties or obligations. Properly read, the law should be seen as recognizing its own limits, beyond which there is freedom, liberty, the vast panoply of human life enjoyed by people who have a right to be left alone.

Respondent pretermits and denies nonprivileged use of auto-mobile personal property in the exercise of petitioner's myriad God-given rights.

In this case he asserts all use of the road is by employers and employees, and by commercial users only in a corporate for-profit capacity (p. 13). The operation of motor vehicles is only activity he is willing to admit occurs on roads and boulevards. He is unwilling to admit that if one has ingress-egress rights, one has unfettered and free use of the public way. Petitioner establishes this legal precept in his administrative notice on ingress and egress rights, of record. Respondent quotes a court case cited by respondent in his administrative notice regarding soil rights – but fails to read it. "**Her only private property in the street is her right of ingress and egress.** She has no other right or interest in the street which is not to be enjoyed equally by each and every member of the community and the public generally." Coyne v. City of Memphis, 118 Tenn. 651, 102 S.W. 355, 359 (1907) (emphasis in original from administrative notice, p. 2).

This quote supports petitioner's right to direct his automobile freely as "enjoyed equally by each and every member of the community and the public generally." Cops, deputies and troopers defraud and abuse the public by blocking their ingress-egress rights under the commissioner's widely obeyed totalitarian theory.

6.34 million drivers targeted illegally

Liable parties under TFRL & Atwood have certificates as POFR ↓

3,000 SR-21s

EIVS actual targets

Rogue Eye of Sauron Program EIVS

‘Traveling & shipping public,’ a vital privilege distinction

State law, in fact, “does address or recognize” petitioner’s assertion about private rights in non-privileged self-propulation not affecting the public interest. “Public highways and streets are intended principally for **public travel and transportation”** Tenn. Code Ann. § 54-5-801 (emphasis added). Motor carriers (i.e., transportation) are regulated in chapter 15 of T.C.A. § Title 65 to “(1) Regulate, foster, promote and preserve proper and economically sound transportation and authorize and permit proper coordination of all transportation facilities; (2) Relieve existing and future undue burdens upon the highways arising by reason of their use by **motor vehicles**; (3) Protect the welfare and safety of the **traveling and shipping public** in their use of the highways, and in their contact with the **agencies of motor transportation and allied occupations**; and (4) Protect the property of the state and its highways from unreasonable, improper or excessive use” T.C.A. § 65-15-101 (emphasis added). To “provide information in the specific interest of the traveling public, the commissioner [of transportation] is authorized to maintain maps and to permit informational directories” at “safety rest areas” § 54-21-110. Information for traveling public. The Scenic Highway System Act of 1971 serves pleasure users of roads. The act limits commercial messaging “for the recovery and conservation of natural scenic beauty along designated scenic highways” T.C.A. § 54-17-104. Scenic routes are “designated to offer alternative travel routes to the **high-speed, heavily traveled highways** in the state” used by heavy commerce. Scenic highways “shall provide the motorist with **safe and relaxing** routes of travel” for pleasure. Scenic highways are off the track beaten down by trucks. The plan shall include “[t]he major routes of travel of **tourists** through the state so as to maximize the use of scenic highways by **visitors** in the state” T.C.A. § 54-17-105 (emphasis added).

“In the event of a transportation system failure, an imminent threat of a failure, or other emergency that the commissioner reasonably believes would present a hazard to **the traveling public** or a significant **delay in transportation, t**hen the commissioner shall

have the authority to enter into contracts narrowly tailored to remedy the actual or imminent failure or other emergency" § 54-1-135 (emphasis added). Transportation system failures and emergencies; authority of commissioner; contracts. "The monthly county court is vested with the power *** to establish road improvement districts for the purpose of building and maintaining **public roads** in the road improvement districts, and building bridges, culverts, and levees on the roads and to locate and establish the roads, or provide for these things being done whenever they are of **public utility or conducive to the public welfare**" T.C.A. § 54-12-101 (emphasis added). "All roads, streets, alleys, and promenades where legally dedicated and **thrown open for public travel or use free of charge** shall be exempt from taxation" T.C.A. § 67-5-204 (emphasis added).

Private blockages of the road are prohibited. "(a)(1)(A) The department is authorized to remove, store, sell and dispose of personal **property encroachments** on the rights-of-way of highways under its jurisdiction at the expense of the owner. (B) If the encroachment presents an immediate danger to the ***<u>traveling public</u>***, the department may remove the encroachment without prior notice to the owner. *** (C) If the encroachment does not present an immediate danger to the **traveling public** and the owner's name and address can be ascertained by reasonable inquiry" T.C.A. § 54-5-136 (emphasis added). Under color of law, blockages of the public right of way by respondent and law enforcement agencies are an oppression likewise prohibited.

Rights of way = 'transmission of public intelligence'

Roads serve as means of transmission of public intelligence and communication. "Utilities are an **integral part of the full use of the public rights-of-way**, all serving the public interest. *** Since 1905 under the holding in Frazier v. East Tennessee Tel. Co., 115 Tenn. 416, 90 S.W. 620, 3 L.R.A.,N.S., 323, Tennessee has been committed to the view that the use of public rights-of-way by utilities for locating their facilities is a proper highway use subject to their **principal purpose as travel and transportation of persons**

and property. ‘Clearly since the Cater decision in 1895, Minnesota has been definitely committed to the view that the use of rights-of-way by utilities for locating their facilities is one of the **proper and primary purposes** for which highways **are designed even though their principal use is for travel and the transportation of persons and property.** Furthermore, the import of that decision is a clear recognition that the use of highway rights-of-way for the ***transmission of public intelligence*** **and public utility services confers important and direct benefits upon the public** and that such use is not solely for the benefit and convenience of the utilities’” Pack v. S. Bell Tel. & Tel. Co., 215 Tenn. 503, 511, 387 S.W.2d 789, 792–93 (1965) (emphasis added).

Respondent says only “driving *** his vehicle” is allowed petitioner as permissible travel. “However, in order for the petitioner to drive his vehicle on and off his property and over the streets and highways of this state, he must comply with Tennessee laws addressing motor vehicle title and registration,” he says, citing State v. Booher, 978 S.W.2d 953.

Streets and roads are not owned and controlled by respondent or the state. They are owned by the people, in whom “all power is inherent” and upon which authority “all free governments are founded *** and instituted for their peace, safety, and happiness” Tenn. const. art. 1, sect. 1. Respondent regulates roadways’ commercial use by drivers and operators. The state is guardian. It is trustee. The constitution and a right reading of law admit no obstruction of free movement that respondent’s motion threatens. The right of free communication by using ingressing and egressing automobiles is “enjoyed equally by each and every member of the community and the public generally,” apart from the state, *apart from the commercial privilege system with its truck drivers, haulers and rigs*. Respondent and policy-following police officers and deputies constitute an “encroachment [that] presents an immediate danger to the ***traveling public***.”

Since revocation, petitioner uses his minivan as an automobile, apart from privilege. Respondent describes this criminal activity as "driving an unregistered vehicle." It's not a vehicle, registration revoked. Petitioner is not driving it, not engaged in the acts requisite for privilege, per Phillips v. Lewis, 3 Shannon's cases 230, forbidden under Tenn. Code Ann. § 55-50-504. [2] He's merely enjoying his rights in its movement down the roadway.

If the commissioner is hostile to fundamental ingress-egress rights — implying as they do the absolute liberty of movement upon the roads without abrogation, interruption or seizure — **he is disposed to be careless about controlling statute dealing with the exercise of the driving privilege** under TFRL and Atwood.

Conclusion

Relator emphasizes the constitutional issues to show bad faith by respondent, a willingness to violate the public trust against members of the public outside Atwood's authority. The hearing officer may opt to punt this case by finding he has no subject matter jurisdiction, since hearings in TFRL are heard in department of safety and proceedings are void if not authorized by law.

> (a) Except as otherwise specifically provided, the commissioner shall administer and enforce this chapter, may make rules and regulations necessary for its administration, and **shall provide for hearings upon request of persons aggrieved by orders or acts of the commissioner** [safety] under this chapter; provided, that the requests are made within

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> (a)(1) A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel *** or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor.

Tenn. Code Ann. § 55-50-504

> twenty (20) days following the order or act and that failure to make the request within the time specified shall without exception constitute a waiver of the right.
> (b) Any person aggrieved by an order or act of the commissioner under this chapter may seek judicial review of the order or act as provided by § 4-5-322.

§ 55-12-103. Administration; hearings; appeal and review (emphasis added)

No provision in Atwood allows for hearings in revenue. UAPA specifically declaims it applies to revenue rulings. Yet the proceedings have been under color of UAPA. On this point alone of subject matter jurisdiction, the hearing officer can smash the illegal and unconstitutional Sauron program. Petitioner's citations of nearly 30 other violations add to the debris and dust of the tower's crashing down.

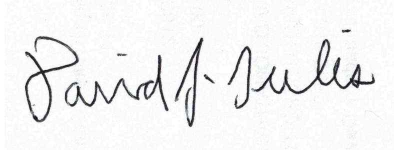
This case is a grotesque scandal he has denied the past 461 days since petitioner filed notice. The program is an aberration, a picture of in-grown corporate capture of a government agency in departure from law. Respondent views the T.C.A. § 55-12-214 ban on new requirements as inconsequential as a piece of lint or a bottlecap.

Respondent's cases cited describe summary judgment (p. 4), rules for statutory construction (p. 10), ingress-egress and travel rights (pp. 14, 15). All the court cases dealing with financial responsibility are in support of petitioner, and he ignores them.

Petitioner challenges the hearing officer to be true to his word about the case. Petitioner demanded his recusal in this unprecedented first-impression suit on grounds of interest, prejudice, amity, familiarity and institutional bias. The AHO refused, saying he will rule on the law and facts truly, without flinching, wherever they take him. This case demands that he lay all hope, comfort and affinity aside on realizing petitioner is right about grievance personal and representing those of Tennesseans as a whole. This petition against Eye of Sauron empowers him to favor the rules of statutory construction that forbid party spirit when justice and jurisprudence itself are at stake.

In light of the forgoing, petitioner demands the hearing officer reject the commissioner's motion for summary judgment, and give recognition and favor to petitioner's.

Respectfully submitted,



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David Jonathan Tulis

CERTIFICATE OF SERVICE

A digital copy of this document is being emailed this 29th day of October 2024, to the party representing the respondent, as follows:
Camille Cline, Department of Revenue
Camille.Cline@tn.gov