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

Reply to respondent's response to petitioner's MSJ

> *The asseverations of counsel, however solemn, have nothing to do with the facts or merits of causes before the court; and if any judge could be so unstable in his views, or so feeble in his judgment, as to yield to them, he would not only surrender his independence, but betray his duty. However humble may be his own talents, he is compelled to treat every opinion of counsel, however exalted, which is not founded in the law and the facts of the case to be voiceless and valueless.*
>
> — Nelson v. State, 219 Tenn. 680, 695, 413 S.W.2d 358, 364–65 (1967)
> Quoting Justice Story

Respondent in this case coerces members of the public to buy insurance they can't afford and obtain policies that aren't certified.

This summary is shorthand for the parasitic operation run by respondent in defiance of clear law. In responding to petitioner's motion for summary judgment, he ignores the main legal framework in this case. Noncertified policies are incapable of being evidence of proof of financial responsibility ("POFR"), and no one in the general public can buy a policy certified by the insurance company unless that person meets a statutory requirement, namely suspension.

The commissioner and counsel fail to provide honest government services and honest counsel, respectively, whether regarding the state constitution and its privilege system or the Tennessee financial responsibility law ("TFRL") and its Atwood amendment ("Atwood").

Respondent says the constitutional rights analysis is "[o]ne of the primary arguments advanced by the Petitioner." Not true. The constitutional limits on privilege are sidebar matters put in play to show respondent's willingness to violate the little law of Atwood because he easily violates the venerable authority of the Tennessee constitution.

Constitutional limits on department authority are sacrosanct. Ingress-egress rights are not affected when the department obeys the law. Petitioner's suit, in fact, defends TFRL and Atwood to make them work for the public benefit.

Under color of law respondent deprives petitioner of his right to commerce by revoking his privilege. Meanwhile, as petitioner moves down the right of way in his automobile, respondent denies any private, non-privileged movement in enjoyment of ingress-egress rights. He suggests "this distinction" between privileged and nonprivileged "is incompatible with the actual structure of motor vehicle and title registration law in Title 55" (p. 5), which law *establishes* the regulations upon the *driving privilege*.

Respondent commissioner claims his positions "are based on a plain language reading of the statutory text" and offers authorities to "[confirm] that the Department's interpretation *** is correct" (response p. 7). Petitioner, on the other hand, pushes a "preferred interpretation" (p. 13) and in a "glaring oversight" writes "over 250 pages of briefing" that "controverts [the statute's] plain language" and "fails to offer any explanation" as to "why the Atwood Law does not limit its own application to post-accident reporting" (p. 12).

Respondent alleges in petitioner's analysis a person becomes falls under the electronic insurance verification system ("EIVS") only by having an accident. Petitioner has stated one gets there numerous ways. Unsatisfied court judgment. DUI. Conviction for reckless driving. § 55-50-502, suspension of licenses. Under chapter 12, the person crosses into "suspension" territory by failing to obey the 20-day rule in reporting a qualifying accident to department of safety ("DOSHS" or "safety"). T.C.A. § 55-12-104. Given dispositive material fact of no accident, petitioner is not subject to proof of financial responsibility ("POFR").

Under § 55-12-139, an officer is to utilize EVIS to verify "motor vehicle liability policies." The stated purpose of Atwood's EVIS program is the verification of "motor vehicle liability insurance policies" § 55-12-202. The words naming the policies is slightly different, but they refer to the same creature with the same meaning and are clearly defined. "'Motor vehicle liability policy' means an 'owner's policy' or 'operator's policy' of liability insurance, certified as provided in § 55-12-120 or § 55-12-121 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" § 55-12-102(7).

The policies EVIS is tasked to monitor are these certified policies. EVIS does not verify an owner's or operator's policy unless it has been **certified *into,*** *or* ***turned into, converted into,*** a motor vehicle liability policy because it is required of a person under the law.

Under § 55-12-139(b)(2)(A), only a certified policy is a "policy of insurance meeting the requirements of this part." The cash deposit or bond under (b)(2)(B) can be in the amount of damages sustained. That can only be determined after an accident, with the very definition of bond under § 55-12-103 implying "after accident."

The fact that "motor vehicle liability policy" is specifically defined proves that any other policy is not proof of financial responsibility.

Respondent claims — quick review

➤ **Flow chart, other exhibits.** The flowchart, respondent claims, is entered without "appropriate foundation for its admission;" petitioner "does not introduce or explain the flowchart" and "does not *** explain *** or otherwise refer to it in the materials he submitted with his Motion" (p. 13). These are fatuous claims. The exhibit constitutes an unrebutted visual restatement of how financial responsibility works. Respondent reports no errors in TFRL and Atwood as charted in motion. [1] With statute cited at every step, the flowchart traces a citizen's journey into the world of privilege supervision. It benefits the hearing officer, the lawbreaking commissioner and petitioner's cause.

Petitioner's brief in support, detailing 29 abrogations of law, is damning but a "procedural abnormality." Briefs in support or normal for filing of a motion. Respondent dislikes exhibits from IICMVA, given authority at T.C.A. § 55-12-202 and 203. These explain how financial responsibility, policy certificates, SR-22s and data search fields serve the public interest. For DOR, these details are hearsay at TN. R. Evid. 701 or lay witness opinion testimony at 802, best disregarded.

Other "irrelevant" facts are in the exhibits because they evidence the legal facts of Tennessee's privilege management system – and its limits. Reference to petitioner's arrest in enjoying ingress-egress rights Nov. 22, 2024, on federally protected press business exercise show how corrupt and violent respondent's policies are. Deputy Brandon Bennett and Sheriff Austin Garrett were administering Title 55 outside the scope of the law, and imposed an actionable false imprisonment and false arrest, despite

[1] The flowchart shows how a registered motor vehicle owner enters EIVS through failure to comply with TFRL's 20-day rule of reporting a qualifying accident. For simplicity's sake, the flowchart omits court judgment, conviction, etc. as pathways into EIVS.

being put on awares of the law by Tennessee transportation administrative notice at **EXHIBIT No. 1**. Such cavalier violence constitutes a crime against petitioner under color of § Title 55, indicated by **EXHIBIT No. 4**.

The commissioner and the "law enforcement agencies" agree on the backdrop behind this case – the abolition of constitutional guarantees. Does petitioner need to get respondent's permission to use his automobile to travel to church, exercise press liberties or enjoy freedom to assemble? The tax commissioner is on record as saying yes. Petitioner's exhibits and affidavits show the oppressiveness of his position.

➤ **Registration "erroneously issued" claim.** Respondent lodges revocation authority in § 55-5-117(a)(1) to say the registration is "erroneously issued" and "becomes erroneous" when petitioner drops coverage of an ordinary noncertified owner's or operator's insurance policy. [2] At what point in the process to revoke relator was DOR "satisfied that the registration *** was *** erroneously issued"? "Once the notice provisions of the Atwood Law are fulfilled and the Department becomes obligated to undertake that suspension, the continued validity of the registration in question becomes erroneous" (p. 7). This theory is new, desperate and without merit.

➤ **Admission of breach.** Respondent admits 29 abrogations of law stated in petitioner's motion for summary judgment and detailed in his brief in support. No interaction with these analyses in the response. No correctives. No rebuttal. The analysis should be considered as accepted.

[2] Noncertified operator's or owner's policies are recognized in TFRL at § 55-12-105, deposit of security; proof of security. Here, the driver shows proof of financial security by "[f]ling of written proof of insurance coverage with the commissioner [of safety] on forms approved by the commissioner." Attached to his state form are copies of insurance card ot insurer policy mailing.

➢ **No explanation.** Respondent response fails to address the reason or condition precedent to petitioner's being included in EIVS other than that his VIN being included as part of insurance companies' full book of business download. The commissioner in his response refuses to admit that the full book of business must be under law. It includes only the SR-22 book of business of certified motor vehicle liability insurance policies per T.C.A. §§ 55-12-101, -120, -122, and not the broad form owner's, operator's or comprehensive insurance policies absent certification. His response, like his policy, ignores the law.

➢ **Authority of the hearing officer.** "The administrative judge does not have authority to order the majority of relief requested by the petitioner," respondent says, citing T.C.A. § 67-1-105. The hearing officer says the proceedings are under uniform administrative procedures act ("UAPA"). The standard by which a department program is evaluated in UAPA is whether the policy is in "[i]n violation of constitutional or statutory provisions;" or is "[i]n excess of the statutory authority of the agency," involves "unlawful procedure," is "[a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion" or is "unsupported by evidence that is both substantial and material in the light of the entire record" Tenn. Code Ann. § 4-5-322, judicial review.

If operation of the electronic insurance verification system ("EIVS") is unconstitutional, it is his duty to shut it down. An order to restore the tag necessarily wrecks the fraud because the department has no authority to make private exceptions; all motor vehicle registrants so treated get the same honorable treatment.

The commissioner says petitioner "seeks all manner of relief little of which is related to the reinstatement of his motor vehicle registration." Petitioner's relief demanded list, at ¶ 26, p. 144, demands "that petitioner's motor vehicle registration be restored," with all other relief "related" to termination of the program under law.

In an earlier order the AHO says the "case will turn on whether the facts and law supported the department's suspension of his registration of the vehicle under relevant statutory authority." If the hearing officer unmakes a corrupt act by the department, the law authorizes him to apply the balm of law as far as the harm reaches in his employer's fiefs, as would the commissioner if he were sitting on this case.

➢ **Section 139.** Respondent claims Part 2 (Atwood) is "independent" of Part 1 (TFRL). Still, the commissioner relies on sect. 139 as principle authority, specifically the first sentence, for a purpose the rules of statutory construction forbid (*ejusdem generis*. See petitioner's motion, pp. 24 ff).

Sect. 139 was passed in the 102nd general assembly in 2000 Tennessee Laws Pub. Ch. 291 (H.B. 1576), its first provision reading, "(a) Every vehicle driven on the highways of this state must be in compliance with the financial responsibility law." This provision, read in *para materia* with the balance of Part 1, says how the law is enforced upon its subject. Part 1 says the subject is the person obligated to prove POFR *for cause*.

The commissioner says sect. 139 "imposed the mandatory financial responsibility requirement on all vehicles registered for on road use" (p. 9). Brushing off references to court cases supporting the law as presented by petitioner, he says 139 breaks the mold the cases describe, rendering TFRL jurisprudence irrelevant. Meanwhile, he moves heaven and earth to get into the record statements of Republicans and Democrats in house and senate as to their views on the law, as these control over what's fixed on the law.

Petitioner "takes the position that these decisions continue to control the analysis despite the enactment of laws in conflict with their conclusions. It is not appropriate to

consider those decisions as imposing limitations on subsequently enacted laws" (p. 9). Sect. 139 does not create what DOR calls "ongoing mandatory financial responsibility requirement" on any person not already subject to having to buy motor vehicle liability insurance policy,

Sect. 139 does not rewrite of the law. Atwood is not a rewrite of the law. Neither convert Tennessee into a mandatory-insurance-for-all-drivers state. In 1999 the general assembly rejected a bill to do just that, making proof of insurance a condition precedent to the county clerk's issuance of a tag to make Tennessee a compulsory insurance state. Coming just after, the addition of sect. 139, is a legislative shortcut to bypass that political defeat and accomplish by trickery without full overhaul. The first sentence of sect. 139 does not make all registrants liable to have run-of-the-mill insurance policies under the rules of statutory construction.

Sect. 139 does not accomplish as law all the alleged stated aims in the legislative record cited by respondent. Neither does Atwood. The politicians and the lawyers drafting half-baked reforms fail to use the "repeal" and "rescind" axe upon ostensibly overwritten provisions. These provisions remain, and cannot be ignored or excised by implication. For 22 years, in the case of § 55-12-139, legislators and officials have deceived themselves about their authority, and tricked and oppressed the public. They have no actual legal authority, as the law itself testifies under petitioner's careful uncovering of 29 abrogated provisions. Their days of ignoring the *ejusdem generis* construction rule and others, by God's grace and petitioner's as belligerent claimant in person, are over.

EIVS is for "verification" of insurance policies that are condition precedent for those who are financially irresponsible. Insurers send DOSHS a **certificate** of insurance per §

T.C.A. 55-12-123, cancellation or termination of policies; notice.[3] These policies do not lapse without the insurer giving notice to DOSHS in a 10-day window. Lapse of petitioner's policy was done without notice. He did not have a certified policy liable under the statute. His Honda Odyssey minivan policy by State Farm was not subject to any requirement. Atwood doesn't consider or operate on owner's and operator's policies.

Respect for constitution?

The nonprivileged use of the roads is a sidebar in this case. It highlights respondent's vicious disregard of black-letter law. The issue arises from the commissioner's practice, in policy, of criminalizing nonprivileged use of the disputed automobile in the pendency of the case. Respondent denies *a priori* the possibility of nonprivileged use and prohibits it under color of law in the nature of an attainder with no such bill having been passed by the general assembly to outlaw a whole category of people without trial.

Respondent has no authority to trench upon ancient personal rights that pre-exist state of Tennessee, rights that cannot be legislated away or converted into privilege or favor. "A state may not impose a charge for the enjoyment of a right granted by the federal constitution." Murdock v. Com. of Pennsylvania, 319 U.S. 105, 113, 63 S. Ct. 870, 875, 87 L. Ed. 1292 (1943).

Ingress-egress rights belong to man made in God's image. Every man, woman, person or individual. Relator lives on soil in Hamilton County, part of a disposal of land that he

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[3] When an insurance carrier has **certified** a motor vehicle liability policy under § 55-12-120, insurance so **certified** shall not be cancelled or terminated until at least ten (10) days after notice of cancellation or termination of the insurance **so certified** shall be filed with the commissioner,

T.C.A. 55-12-123n (emphasis added)

has a right to enjoy in the coming to and departing from. As noted via repetition by respondent, his right is no greater, nor any less, than any other person enjoying the right of way. "Again it is said: '**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 added) (first cited in administrative notice of ingress-egress rights, of record).

Tenn. const. Art. 1, sect. 36, shows federally protected right in ingress-egress. "[T]that all the territory, lands and waters lying west of said line, as before mentioned, and contained within the chartered limits of the State of North Carolina, are within the boundaries and limits of this State, over which the people have the right of exercising **sovereignty**, and **the right of soil**, so far as is consistent with the **Constitution of the United States**, recognizing the **Articles of Confederation**, the Bill of Rights and Constitution of North Carolina, the **cession act** of the said State, and the **ordinance of Congress** for the government of the territory northwest of the Ohio *** ." The articles of confederation recognize the citizens' right to come and go at liberty, memorializing that "the people of each state shall have free ingress and regress to and from any other state," as well as, by implication, "ingress and regress" from their private soil within a state boundary (intrastate) (emphasis added).[4]

[4] Articles of confederation, Article IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other State of which the Owner is an inhabitant; provided also that no

The state and federal constitutions prohibit the commissioner's claim of authority beyond constitutional grant and statute law in Tenn. code ann. titles §§ 55, 65 or 67. He has no basis to make any claim of tax authority outside of (1) privilege or (2) police power exercise without a sworn arrest warrant of a crime committed. Tenn. const. art. 1, sect. 26, establishes two modes of taxation, *ad valorem* and privilege. Privilege is defined by the court cases, many of which petitioner has cited, led by Phillips v. Lewis, 3 Shannon's cases 230, 1877, duly published by Shannon, supplied to the AHO by both parties. (See appendix.) The commissioner denies the limits in the law, and misrepresents the motor vehicle privilege law to deceive the hearing officer, breaching oath of office, violating Rule 8 of the supreme court's ethics rules for lawyers or attorneys.

The constitution raises a barbed wire fence making petitioner's shield impenetrable. "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 (emphasis added).

Privilege is ***always*** upon for-profit activity in commerce affecting the public interest. The commissioner states that he *operates outside these parameters* and alleges the general assembly does, too, p. 5. He puts the motor vehicle laws *above the constitutional grant* at Tenn. const. Art 1, sect. 28 creating the two taxing powers. Title 55 does ***not*** make the distinction between privileged and nonprivileged use of the roads,

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imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

https://www.archives.gov/milestone-documents/articles-of-confederation

he claims. As privilege cases make clear, the constitutional privilege authority and management necessarily is upon motor vehicle registrants, owners, and others under privilege. Phillips v. Lewis describes the limits in the constitution, the ignoring of which petitioner highlights in this case, to respondent's shame, to defeat his credibility.

Revenue commissioner boners

The commissioner foozles basic tax law in Tennessee on privilege. Almost as bad, he misstates petitioner's position **five times**, the first on p. 3,

> The petitioner describes this idea in terms of "privileged" versus "non-privileged" use of the roads, whereby **"privileged use"** denotes private travel that a state purportedly has no authority to tax or regulate, and **"non-privileged"** use refers to travel undertaken for commercial purposes, which the Petitioner views as appropriately subject to governmental restriction.

Response p. 3 (emphasis added)

Respondent has it exactly backwards: Privileged is commercial, nonprivileged is private, as petitioner says. Respondent says it's not clear whether petitioner

> considers ordinary registration on private passenger vehicles to infringe upon his **"privileged"** use of the roadway for **noncommercial** activities.

Response p. 4, footnote 4 (emphasis added)

Respondent means to say *"nonprivileged" use*. His idea is: It's not clear whether petitioner considers "ordinary registration" to infringe on his non-privileged or free use of the road for noncommercial purposes. To answer the question: No. Registration lets petitioner use his automobile *as a motor vehicle* in commerce as needed. A tag makes

an automobile commerce ready, and is no infringement, as he has to apply for the privilege and pay fees.

Respondent is weaving in his lane.

> In the Petitioner's mind, the imposition of a mandatory financial responsibility requirement on registrants engaged in private travel only amounts to a violation of petitioner's asserted right to free use of the roadways for **"privileged"** activities.

Response p. 3 (emphasis added)

This psychologizing of petitioner should correctly refer to "'non-privileged' activities" in the bold type. Respondent is confused.

Twice more the commissioner gets "privileged" and "non-privileged" backward.

> Put bluntly, the Tennessee General Assembly is not constrained by *Phillips v. Lewis* in terms of its authority to implement laws imposing fees or other restrictions on the operation of motor vehicles on Tennessee roads, even if this includes restrictions on the operation of personal use vehicles that the Petitioner would argue is **"privileged"** pursuant to the 1877 decision.

Response p. 5 (emphasis added)

> Further, while Petitioner would contend that the state may only regulate **"nonprivileged"** use of the road representing the operating of a vehicle for commercial purposes, the law imposes registration fees and other restrictions on vehicles operated for both personal and commercial purposes. See Tenn. Code Ann. §§ 55-4-112-113 (imposing fees on vehicles operated for commercial purposes).

Response pp. 5, 6 (emphasis added)

In these two last bolded instances, the first should read "nonprivileged." The second should read "privileged." Why take the space to point out these blunders? Respondent is *intending to addle the hearing officer* as to the nature of privilege taxation and petitioner's intent and good-faith analysis. The commissioner either has not read petitioner's briefs and basic law, or he knows them well and is corrupting the court.

Nothing has changed in Tennessee to convert rights into privileges. The constitution, which respondent acknowledges perfunctorily in a footnote, establishes privilege. [5] Phillips v. Lewis explains the essential elements of privilege as bedrock law. Personal use automotive conveyances are not "operated." Family purpose enjoyment and pleasure are **not** under privilege. The state regulates only **privileged use** — meaning movement on the public road in pursuit of private profit and gain, which is not of right. "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" State v. Harris, 168 Tenn. 159, 76 S.W.2d 324, 325 (1934). [6]

[5] Respondent is correct to say the general assembly "must not run afoul of the protections enumerated" in state and federal constitutions. p. 5, footnote 6

[6] The full quote from the Harris court:

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 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.

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

Respondent says petitioner claims TFRL "violates his constitutional rights to 'ingress and egress" p. 3 footnote 3. This fib is in bad faith. Petitioner affirms TFRL is constitutional. He is upholding it as lawful legislation upon the privilege using chapter 12 and its Atwood amendment that respondent has turned into a criminal enterprise and tool of oppression. The power to regulate the privilege does not extend to oppress or regulate acts *enjoyed by right*. "And our decisions have made clear that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license." Shuttlesworth v. City of Birmingham, Ala., 394 U.S. 147, 151, 89 S. Ct. 935, 939, 22 L. Ed. 2d 162 (1969)

The violation of ingress-egress rights as alleged by relator occurs *after revocation*. Respondent forbids private ingress-egress enjoyment, claiming petitioner is "operating" a "motor vehicle." Petitioner ingress-egress right is recognized in the family purpose doctrine, Starr v. Hill, 353 S.W.3d 478 (Tenn. 2011). Said right is denied by the commissioner and by a Hamilton County sheriff's deputy who arrests journalist petitioner Nov. 22, 2023, on private press business in a criminal case dismissed by the prosecutor and an evident false imprisonment and false arrest of criminal nature. (See David Jonathan Tulis Affidavit of complaint [r]egarding crime against him by deputy Bennett under direction Austin Garrett, MSJ **EXHIBIT No. 4**).

Petitioner agrees that new laws alter or reform existing statutes. Sect. 139 updates are upon privileged activity, and the 2002 law and its 2005 update don't violate constitutional rights because 139 affects only "the operation of motor vehicles on Tennessee roads" in privilege, and not ingress-egress directly. Sect. 139 regulation does not implicate the right to travel. State v. Booher, 978 S.W.2d 953. Petitioner brings constitutionally guaranteed rights into view because respondent refuses to accept that

registration of a motor vehicle is for commercial purposes, enjoyed disjunctively from and in addition to petitioner's private, **non**privilege ingress-egress enjoyment purposes and intent that respondent commits the department to abrogating, a personal harm to petitioner and an oppression ***in addition to*** the oppression of misuse of EIVS.

On two fronts, respondent is a lawbreaker.

> (1) The supreme law in the constitution on ingress-egress soil disposal rights enjoyment in relator's 2000 Honda automobile.
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> (2) The statute law requiring EIVS to monitor only certified SR-22 motor vehicle liability insurance policies per T.C.A. § 55-12-102, -120, -122, -204 ("verify whether the financial responsibility requirements of this chapter have been met with a motor vehicle liability insurance policy"), -205 ("data transfers of proof of motor vehicle liability insurance in accordance with IICMVA specifications and standards"), and -210 ("If the vehicle is no longer insured by the automobile liability *insurer of record* *** the owner of the motor vehicle becomes *eligible for notice*" (emphasis added)), and more.

The general assembly has not been delegated power or authority to convert a liberty into a taxable privilege. "The claim and exercise of a constitutional right cannot *** be converted into a crime" Miller v. United States, 230 F.2d 486, 490 (5th Cir. 1956). "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them" Miranda v. Arizona, 384 U.S. 436, 491, 86 S. Ct. 1602, 1636, 16 L. Ed. 2d 694 (1966). "[A] person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution" Murdock v. Com. of Pennsylvania, 319 U.S. 105, 114, 63 S. Ct. 870, 875, 87 L. Ed. 1292 (1943). The commissioner of revenue is not given authority to condition a right. There exists under God's good providence an unalienable "nonprivileged use" of the public right-of-way antecedent to the formation of the state just as there is a revocable "privileged use" of the public right-of-way by act of legislative creation — i.e., use of the road for the primary purpose of private profit and/or commercial gain.

DOR is unwilling to see in statutory language any limit to the law's scope. As to use of roads, Title 55 is totalitarian. Respondent forbids activity of right as petitioner awaits restoration of his tag in controversy since July 21, 2023.

> In addition to the fact that Petitioner is unable to produce mandatory or binding authority to support his arguments on the purported distinction between privileged and non-privileged use of the road, this **distinction is incompatible with the actual structure** of motor vehicle title and registration law in Title 55 ***. As a general matter, Title 55 **does not recognize a distinction between privileged and non-privileged use** of Tennessee roads. Rather, Tenn. Code Ann. § 55-4-101(a) provides "the registration and the fees provided for registration shall constitute a privilege tax upon the **operation** of motor vehicles.

Response p. 5 (emphasis added)

Title 55, being on privilege subject matter, necessarily "[recognizes]" the distinction between privilege and nonprivilege in regulating privilege.

Respondent refuses to admit he is by rebuttable presumption administering Title 55 upon the "operation" of motor vehicles, which refers to statutory activity in commerce that he alleges is the only possible way to communicate and move on the public road. His authority is upon "***operation" and nothing more, upon no other use*.** The line running down the middle of the roadway separates privileged use and nonprivileged enjoyment of free movement. (See Tennessee transportation administrative notice, p. 9, "[o]perator defined as commercial," "[d]river defined as commercial." Petitioner motion for summary judgment **EXHIBIT No. 1**) [7]

[7] Petitioner makes verified legal service of Tennessee transportation administrative notice to the principal, then-Gov. Bill Haslam, and his agents, and subsequent holders of the office, of which office respondent serves at the pleasure.

Respondent brings up the distinction between "private passenger" vehicle and "personal use." Tenn. code ann. § 55-4-111. Fees; antiques; trailer rentals; mobile homes, excludes certain conveyances.

> In order to facilitate efficient and uniform enforcement of chapters 1-6 of this title, motor vehicles, **excepting** such motor vehicles as are constructed for the purpose of transporting tangible **personal property** or other property, and **passenger motor vehicles operating for hire**, are classified, and the respective registration taxes imposed are fixed as follows ***

Tenn. Code Ann. § 55-4-111 (emphasis added)

Even "passenger motor vehicles" are excluded, these being automobiles that carry paying passengers and the auto used as a motor vehicle. Also excluded as motor vehicles are privately used trailers not part of a trailer rental business.

> Each person engaged in the **business of renting trailers** of any description to others for a consideration **may** register each trailer, for a period of ten (10) years, and annually pay the registration fee; provided, that every owner of automobile utility trailers **engaged in the business** of leasing such trailers in **interstate as well as intrastate commerce** shall register with the commissioner that the person is so **engaged in the business** of **leasing such trailers in interstate as well as intrastate commerce**, *** [A]ll such trailers properly identified as belonging to the registered person and licensed in any state, territory, province, country or the District of Columbia shall be **permitted to operate** in this state on an **interstate and intrastate basis**. For the purpose of **interstate and intrastate reciprocal provisions** of this chapter, the utility trailers shall be classified the same as **private passenger automobiles** and extended the same privileges. ***

Tenn. Code Ann. § 55-4-111 Registration fees — Classification of vehicles — Registration taxes (emphasis added)

Clearly, a trailer *is a trailer, nonprivileged*. But it must be converted into a motor vehicle when its use is commercial. When "every owner of automobile utility trailers

engaged in the business of leasing such trailers," that owner enters privilege and must register with the department for a registration tag.

Title 55 contains in many places reference to its limits. Petitioner in all this case adopts usages such as **"owner's private conveyance,"** meaning a machine generally not intended for use as a freight motor vehicle. Private use is excluded from regulation, as noted in the terminology:

> (A) Motor vehicles used exclusively for the movement of farm products for the grower from the point of production to the first market, or operated as farm trucks, or as a logging and lumbering truck as defined in subdivision (a)(3)(C), or as the **owner's private conveyance,** transporting only tangible personal property belonging to the owner or a **guest occupant**, shall be classified by the commissioner and registered with the department as freight motor vehicles at the following taxes in lieu of those set out in subdivision (a)(1):

Tenn. Code Ann. § 55-4-113 (emphasis added)

Petitioner has cited the Tennessee case recognizing how "passenger" is distinct from "guest occupant," which term describes people in an auto who are not paying passengers in commerce. "Guest occupant" is legal description of a man, woman, boy or girl in an automobile, not paying, not a passenger, and not part of a commercial relationship with the person behind the steering wheel enjoying ingress-egress rights exercise. Talbot v. Taylor, 184 Tenn. 428, 431, 201 S.W.2d 1, 2 (1935), abrogated by McIntyre v. Balentine on grounds apart from the guest-passenger distinction, 833 S.W.2d 52 (Tenn. 1992)

So there. Title 55 does "support his arguments on the purported distinction between privileged and nonprivileged use of the road," to quote respondent at p. 5.

Personal use envisions non-privileged use of the roads which subjects a head of household to liability for an accident and injuries arising under the family purpose doctrine. Existing law and judicial doctrines account for both privilege and

non-privilege use of the roads. Moreover, T.C.A. § 55-12-139(a) makes use of the operative language 'subject to" which does not include ALL automobiles, just those "subject to" regulation by virtue of the operation in privilege.

This suit is to obtain commercial privilege by restoring a registration tag for a Honda Odyssey minivan, now a mere automobile but needed by petitioner for a commercial purpose of private profit and gain on the people's roads, which act he cannot do without permission. His bid for his tag is to make the minivan a vehicle, which is the same as a freight motor vehicle by definition.

> "Vehicle" and "freight motor vehicle" means every device in, upon, or by which any person or property is or may be **transported** or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks."

Tenn. Code Ann. § 55-1-103(e) (emphasis added)

The constitutional issues of private use of the automobile are a sidebar in this case, the main question for the hearing officer being the program that revoked his tag without due process hearing or legal authority. Accepting late notice of legislative history, petitioner gleans speeches and Q&As by Rep. William Lamberth. The Atwood house sponsor is an attorney, a former assistant district attorney, and a politician. With this background, he misrepresents the legally operative language of TFRL and sect. 139.

Legislators' words don't control over what they write in the law. Argument and statements in the house well don't override provisions of law. Orations don't frame — or reframe — a law or its purposes, *especially when respondent has not identified the first provision, paragraph, sentence, phrase or word that is ambiguous.* ***Not the first one.*** Controlling in this case: Words of the legislature within the four corners of the page. These words are the full expression of the will of the people via legislation.

‘Effectively discharge the duties of the office’

This lawsuit exposes a departure from law to the commissioner of revenue so that he can halt the program immediately and, necessarily, as an injury to the peace and tranquility of the state. The Eye of Sauron program will be ended, and best it be halted by the commissioner himself, or the hearing officer sitting in his place, with clear optics presented by petitioner.

Petitioner empowers the honorable hearing officer to evaluate the EIVS program in its entirety to see (1) that revocation is unlawful and, (2) that the program behind the act likewise is unlawful. To grant petitioner’s demand for restoration of tag is to admit the Eye of Sauron has no basis, and that respondent must be ordered to obey T.C.A. § 55-12-201 *et seq* and surveil certified motor vehicle liability insurance policies among suspendees who’re exercising the privilege.

If the program is arbitrary and capricious, it demands reform *internal to the department without judicial intervention*. However, if the commissioner contends the program cannot be ended without judicial review, and restitution not made among hundreds of thousands of victims without orders from judges, petitioner gladly continues service as relator. “The commissioner may personally hold such hearings as the commissioner may deem proper” Tenn. Code Ann. § 67-1-105. The hearing officer is “in the place of and in the absence of” of the commissioner. A hearing officer “shall be deemed to be and have the same authority as assistants to the commissioner as provided in § 4-3-1901.” Cmsr. Gerregano has “assistants as are deemed necessary to effectively discharge the duties of the office in an orderly and efficient manner” T.C.A. § 4-3-1901.

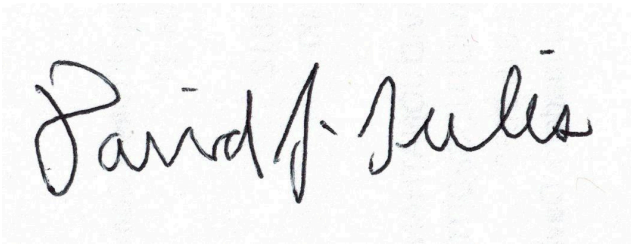
Whether junking the capricious program is to be done personally by Cmsr. Gerregano, or done by a hearing officer in his stead,, the law demands “[effective] discharge [of]

the duties of the office," and this operation of law ordered "in an orderly and efficient manner" in disfavor of private, personal interest and in the *public* interest.

The commissioner is under petitioner's administrative notice about the program's being a criminal enterprise. Atwood, incorporating TFRL in Part 1, monitors high-risk and financially irresponsible drivers who, intent on keeping the privilege restored, agree to keep certified liability insurance policies for the duration of the suspension, monitored by EIVS. T.C.A. § 55-12-114 ("the person shall provide proof of financial responsibility prospectively for a length of time equal to the length of time for which the suspension or revocation was in effect.") As the law explains it, those subject to monitoring are subject by court judgment (civil verdict), criminal conviction (DUI, reckless driving) or disobedience to T.C.A. § 55-12-104, accident reports, and § 55-12-105, deposit of security; proof of security.

Petitioner is not subject to revocation of his tag. He respectfully demands the court to see his claims on strong, clear and firm law, and the commissioner's rebuttals as insufficient and defective, and consequently to rule in favor of his motion for summary judgment.

Respectfully submitted,



David Jonathan Tulis

Appendix 1

Excerpts Phillips v. Lewis, 1877

Shannon's Code, Vol. III, p. 230, 1877
Focusing on art. 2, sect. 28
John W. Phillips v. W.G. Lewis, tax collector, January term 1877

P. 238. 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 [p. 239] 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 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. ***

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.

P. 243 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 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.

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.

CERTIFICATE OF SERVICE

A digital copy of this document is being emailed this 12th of November, 2024, to the parties representing the respondent, as follows:
Camille Cline, Department of Revenue
Camille.Cline@tn.gov