STATE OF TENNESSEE

IN THE MATTER OF:	)	
DAVID JONATHAN TULIS,	)	
PETITIONER/CLAIMANT	)	
v.	)	**DOCKET NO: 23-004**
TENNESSEE DEPARTMENT OF REVENUE,	)	
RESPONDENT.	)	

INITIAL ORDER
GRANTING DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT
AND DISMISSING PETITION

This case presents an administrative challenge to the suspension of Petitioner David Jonathan Tulis's ("Petitioner") registration for a vehicle with the vehicle identification number ("VIN") 2HKRL1859YH575510 (the "Vehicle"). Before me are cross-motions for summary judgment[1] filed by both Petitioner and Respondent, the Tennessee Department of Revenue ("Department"). For the reasons stated below, I grant the Department's motion, deny Petitioner's motion, and dismiss the petition.

PROCEDURAL HISTORY

The procedural history of this case is extensive and includes several intermediate motions and disputes. For the benefit of the parties and any reviewing courts, this order provides a detailed description of the procedural history of this case. The "Summary," immediately below, addresses only the most essential information.

[1] I use the phrase "cross-motions" to mean competing motions by adverse parties seeking the same relief (here, summary judgment) on the same issues (the merits of this contested case).

SUMMARY

The petition requesting this contested case was submitted through a mailing postmarked July 26, 2023. Petitioner made several demands, including a "stay of execution on revocation of registration until this challenge is settled" and later clarified that he sought the "restoration of the registration of his minivan."[2] The Commissioner of Revenue appointed "Brad Buchanan as Administrative Judge for the Tennessee Department of Revenue … for the purpose of holding a hearing in" this matter "under the provisions of Tenn. Code Ann. § 4-5-301, et seq., and Tenn. Code Ann. § 67-1-105(a).[3]

Petitioner moved for the Administrative Judge to recuse himself[4] and to depose the Commissioner of Revenue.[5] After denying the motion for recusal,[6] I held the pre-hearing conference required by Tenn. Code Ann. § 4-5-306, which was completed on November 22, 2023,[7] and granted the Department's motion to quash the deposition of the Commissioner.[8]

On December 1, 2023, Petitioner filed a motion for a temporary injunction. I denied this motion on December 21, 2023.[9]

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[2] "Amended notice of appeal" at p. 4. *See also* page 6, footnote 25, *infra*.

The revised demands for relief were still not clear but were discussed in an ensuing status conference on November 21, 2023. I understood Petitioner to be seeking "the permanent restoration of his registration of the vehicle with the Vehicle Identification Number ("VIN") 2HKRL1859YH575510." *See* "Order Setting Status Conference and Temporary Injunction Briefing Schedule" (Nov. 22, 2023) at ¶ 2.

[3] "Appointment" (Aug. 3, 2023).

[4] "Motion for recusal" (Sep. 3, 2023).

[5] "Notice of deposition" (Sep. 5, 2023).

[6] "Order Denying Motion for Recusal" (Oct. 2, 2023).

[7] *See* "Order Setting Status Conference and Temporary Injunction Briefing Schedule" (Nov. 22, 2023) at ¶ 1.

[8] *See* "Motion to Quash Notice of Deposition" (Sep. 19, 2023) and "Order Quashing Notice of Deposition of Commissioner David Gerregano and Denying Petitioner's Motion to Compel" (Nov. 28, 2023).

[9] *See* "Order Denying Motion for Temporary Injunction."

In the following months, the parties engaged in discovery, described in detail below. This process included extensive discussions over the content and later the timing of a deposition of the Department under Tenn. R. Civ. P. 30.02(6). That deposition was held on July 9, 2024, after which the Department filed a motion for summary judgment on July 15. Petitioner considered opposing that motion and seeking a final hearing but ultimately chose to submit his own motion for summary judgment, filed on September 27, 2024.[10] Petitioner requested oral argument on the cross-motions, and these arguments were heard on November 22, 2024, after the completion of response briefing for the motions.

THE PETITION

Petitioner submitted to the Department an undated document styled "Notice of appeal" (hereafter, the "Petition") through a mailing postmarked July 26, 2023. He described himself as having "an interest in the operation of the car-cum-motor vehicle VIN 2HKRL1859YH575510" and explained that he was "assert[ing] through notice timely filed his rights under the uniform administrative procedures act for a contested case hearing to challenge defendant [Commissioner David] Gerregano's suspension of the vehicle's registration without due process or a lawful cause."[11]

Petitioner made four demands for relief in the petition:

> 1. [Petitioner] [d]emands evidence from [Commissioner] Gerregano that he has had an accident subject to § 55-12-101 et seq.
> 2. [Petitioner] [d]emands [Commissioner] Gerregano defend the statute pursuant to the aforementioned court cases and the rules

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[10] *See* "Order Setting Status Conference on August 22, 2024" (July 24, 2024) at ¶ 3 for Petitioner's consideration of merely opposing the Department's motion and "Order Setting Schedule for Summary Judgment" (Aug. 23, 2024) for Petitioner's decision to file his own motion.

[11] Petition at p. 1.

of statutory construction that give his department authority to administer the law contrary to its plain meaning.

3. [Petitioner] [d]emands stay of execution on revocation of registration until this challenge is settled.

4. [Petitioner] [d]emands, in the alternative, a F$3.33 refund of the tax paid for the Honda Odyssey minivan VIN 2HKRL1859YH575510, good through Aug. 31, 2023, or for the 42 days remaining under its term of registration, due for renewal Aug. 31, 2023, per department notice, this demand conditioned on the registration intending to be continued, and not expiring of its own right under law.[12]

The Department treated the petition as a request for a contested case under the Uniform Administrative Procedures Act ("UAPA"),[13] and the Commissioner of Revenue appointed "Brad Buchanan as Administrative Judge for the Tennessee Department of Revenue … for the purpose of holding a hearing in" this matter "under the provisions of Tenn. Code Ann. §4-5-301, et seq., and Tenn. Code Ann. § 67-1-105(a).[14]

<u>MOTION FOR RECUSAL</u>

In accordance with the UAPA at Tenn. Code Ann. § 4-5-306, on August 7, 2023, I set a pre-hearing conference in this case for September 6, 2023.[15] Before that conference could be held, Petitioner submitted three filings on September 5, 2023:

- A "Motion for recusal" directed at the Administrative Judge.
- A "Notice of deposition" for the Commissioner of Revenue (hereafter, "First Notice of Deposition";

[12] *Id*. at pp. 3-4.

[13] *See* letter from Karyn Hill, Legal Assistant, Administrative Hearing Office, to David Jonathan Tulis and Anne Warner, Assistant General Counsel, Department of Revenue (Aug. 4, 2023).

[14] "Appointment" (Aug. 3, 2023).

[15] *See* "Order Setting Pre-Hearing Conference" (Aug. 7, 2023). Ultimately, the pre-hearing conference was actually convened on September 7, 2023. *See* "Order Setting Schedule of Disposition for Motion for Recusal" (Sep. 11, 2023) at ¶ 1.

- A "Subpoena of department documents."[16]

At the conference on September 7, 2023,[17] the Department opposed the motion for recusal.[18] I determined that this motion should be resolved before the pre-hearing conference was completed and established a briefing schedule for the motion, granting Petitioner's request for oral argument, and scheduling that for September 25, 2023.[19] In an order dated October 2, 2023, I denied the motion for recusal,[20] and later set a new pre-hearing conference for October 25, 2023,[21] later rescheduled for October 24.

MOTION TO QUASH AND JURISDICTIONAL ISSUES

During the pendency of the motion for recusal, the Department filed a "Motion to Quash Notice of Deposition" on September 19, 2023, in reference to the First Notice of Deposition. On October 10, 2023, Petitioner filed an "Objection to motion to quash, motion to compel," opposing the Department's motion and moving to compel compliance with the notice. I notified the parties that these issues would be discussed at the resumption of the pre-hearing conference on October 24, 2023.[22]

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[16] *See* "Order Setting Schedule of Disposition for Motion for Recusal" (Sep. 11, 2023) at ¶ 2. The first two documents included certificates identifying September 3, 2023, as the date of service on counsel for the Department but were not emailed to the Administrative Judge until September 5, when they were considered filed for purposes of this case.

[17] All conferences referenced in this order were held via telephone.

[18] *See* "Order Setting Schedule of Disposition for Motion for Recusal" (Sep. 11, 2023) at ¶ 3.

[19] *See id*. at ¶ 4.

[20] *See* "Order Denying Petitioner's Motion for Recusal." On October 19, 2023, Petitioner submitted an "Objection to recusal denial, demand for reconsideration." This was denied by an order entered the following day ("Order Denying Petitioner's Demand for Reconsideration of Order Denying Motion for Recusal").

[21] *See* "Order Setting New Pre-Hearing Conference" (Oct. 5, 2023).

[22] *See* "Order Regarding Pending Matters and New Pre-Hearing Conference" (Oct. 11, 2023).

On October 11, 2023—the day before the pre-hearing conference was to be reconvened—Petitioner filed a "Notice of subject matter jurisdiction challenge" in which he asserted that "[u]nless DOR establishes subject matter jurisdiction, (1) petitioner is unable to move forward, and (2) the administrative hearing officer is unable to reach any of the merits of the dispute and is obligated to dismiss ministerially. He is obliged to write an order citing fact and law dismissing the July 31, 2023, petition for relief, of record, for lack of subject matter jurisdiction."[23] Petitioner's concern over the jurisdiction he had invoked with his petition pretermitted discussion of the pending discovery motions at the October 24 resumption of the pre-hearing conference. After using that conference to discuss Petitioner's views on jurisdiction and whether he wished to proceed with this case, I continued the pre-hearing conference to allow Petitioner time to make that decision, directing him to file either a notice of voluntary dismissal or an "amended notice of appeal" (i.e., petition) by November 8, 2023.[24]

Petitioner chose to proceed with this case and filed his "Amended notice of appeal on November 6, 2023. In this document, he revised his third and fourth demands for relief, specifying that he demanded "restoration of the registration of his minivan."[25]

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[23] "Notice of subject matter jurisdiction challenge" at p. 2.

[24] See 'Post-Conference Order for Conference Held October 24, 2023" (Oct. 25, 2023).

[25] *See* "Amended notice of appeal" at p. 4. In my "Post-Conference Order for Conference Held October 24, 2023" (Oct. 25, 2023), I directed that, if Petitioner wished to pursue the contested case, he file an amended notice of appeal "that adds, as a demand for relief, the restoration of Petitioner's vehicle registration" (¶ 1(b)). In a footnote, I explained that my jurisdiction under Tenn. Code Ann. § 67-1-105 was "limited to addressing the legality of some specific action taken by the Department of Revenue. While the reversal of the Department's suspension of his vehicle registration might be implicit in the "notice of appeal," I asked Petitioner on October 24 to clarify that he sought this relief. He stated that he did and agreed to amend the notice of appeal to make this request explicit should he decide to continue with the contested case" (p. 2, n.2). The purpose of this requirement was to ensure that, if Petitioner chose to proceed with this case, he did so while seeking cognizable relief that could be granted in this proceeding.

The revised demands for relief were still not clear but were discussed in an ensuing status conference on November 21, 2023. I understood Petitioner to be seeking "the permanent restoration of his registration of the vehicle with the Vehicle Identification Number ("VIN") 2HKRL1859YH575510." *See* "Order Setting Status Conference and Temporary Injunction Briefing Schedule" (Nov. 22, 2023) at ¶ 2.

MOTION FOR TEMPORARY INJUNCTION

The pre-hearing conference was resumed on November 21, 2023,[26] at which time Petitioner declared his desire for a temporary injunction staying the effect of the Department's suspension of the vehicle registration.[27] I required this motion be made in writing and established a briefing schedule for it[28] while setting a status conference for January 26, 2024, to discuss the progress of discovery.

On November 28, 2023, I granted the Department's motion to quash the First Notice of Deposition (directed to Commissioner Gerregano).[29] On December 21, 2023, I denied Petitioner's motion for a temporary injunction.[30]

DISCOVERY DISPUTES

On January 8, 2024, Petitioner served a new "Notice of deposition" (hereafter, "Second Notice of Deposition"), explaining that he "intend[ed] to exercise his rights under the rules [to] depose an official of the department of revenue under oath for purposes of developing evidence in his contested case to obtain rescission of his tag revocation and to determine if agency heads understand their duties under the Tennessee constitution and relevant provisions of the Tennessee code." This notice named several high-ranking Department officials as "[c]andidates" for this task,

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[26] *See* "Order Setting Status Conference and Temporary Injunction Briefing Schedule" (Nov. 22, 2023) at ¶ 1.

[27] *See id*. at ¶ 3.

[28] *See id*. at ¶ 4.

[29] *See* "Order Quashing Notice of Deposition of Commissioner David Gerregano and Denying Petitioner's Motion to Compel."

[30] *See* "Order Denying Motion for Temporary Injunction." Petitioner filed an "Objection, motion to reconsider" on January 8, 2024. I denied this motion. *See* "Order Denying Petitioner's 'Objection, Motion to Reconsider.'" (Jan. 10, 2024).

but neither specified a deponent nor invoked Tenn. R. Civ. P. 30.02(6) as a basis to depose the Department as an organization.

On January 26, 2024, I held a status conference to discuss discovery and advised the parties that, based on the content of the Second Notice of Deposition, I "agree[d] that Petitioner will need to identify specific, written topics for any deposition of an organizational designee under Tenn. R. Civ. P. 30.02(6)"[31] and expressed the expectation that, before a status conference on February 23, 2024, Petitioner would have identified deposition topics through a revised notice.[32]

Petitioner then served a document titled "Deposition areas of inquiry" on counsel for the Department, identifying 12 topics and another titled "Admissions/denials for department of revenue official to answer under oath, by affidavit as to truthfulness, completeness (REV)," apparently a revised set of 39 requests for admission under Tenn. R. Civ. P. 36.[33]

The Department filed a "Motion for Protective Order" on February 20, 2024 (hereafter, "First Motion for Protective Order"), requesting an order "prohibiting the Petitioner from engaging the Department's representative on the particulars of the Department's legal position in this case or its interpretation of specific statutes, case law, or abstract constitutional principles, including the vast majority of topics identified in the Deposition Areas of Inquiry and the Revised Requests for Admissions."[34] Petitioner responded in opposition with a "Motion to compel" (the "Second Motion to Compel") and also made a "Motion to sanction" the Department's attorney (the "First

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[31] "Order Setting Status Conference on February 23, 2024, and Providing Additional Administrative Guidance" (Jan. 29, 2024) at ¶ 3.

[32] *See id.* at ¶ 4.

[33] The documents are undated and bear no certificate of service but were attached as Exhibits 2 and 3, respectively, to the Department's "Motion for Protective Order" filed on February 20, 2024.

[34] "First Motion for Protective Order" at p. 12.

Motion to Sanction") asserting that the Department's counsel had violated Rule of Professional Conduct 3.3.[35]

I held a status conference on February 23, 2024, with these motions pending and sought to mediate the discovery dispute.[36] I directed Petitioner to respond to the First Motion for Protective Order by offering a justification for each of the 12 topics of discussion in the "Deposition Areas of Inquiry"[37] and granted Petitioner's motion to withdraw his own (second) motion to compel.[38] I also required all written discovery requests be made by March 29, 2024, and set a status conference for May 3, 2024, to consider the progress of discovery and any necessary motions.[39] The First Motion to Sanction was denied in a separate order.[40]

After Petitioner responded to the First Motion for Protective Order and the Department replied,[41] I granted the motion with respect to the topics at issue in the "Deposition Areas of Inquiry" in a "Ruling on Motion for Protective Order" that broadly agreed with the Department's view that these "Areas of Inquiry" impermissibly sought to examine Department witnesses on questions of law.[42] But in light of imprecise requirements in previous orders,[43] I allowed Petitioner

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[35] Both filed February 23, 2024.

[36] *See* "Discovery Order" (Mar. 6, 2024).

[37] *See id*. at ¶ 4.

[38] *See id*. at ¶¶ 8-9. The motion to withdraw the Second Motion to Compel was made on February 23, 2024, after the status conference.

[39] *See id*. at ¶¶ 12-15.

[40] *See* "Order Denying Motion to Sanction" (Mar. 6, 2024).

[41] March 20 and 25, respectively, of 2024.

[42] *See* "Ruling on Motion for Protective Order and Revised Scheduling Order Concerning Deposition of Respondent Under Tenn. R. Civ. P. 30.02(6)" (Mar. 28, 2024).

[43] *See id*. at pp. 4-5.

to formulate additional topics consistent with my ruling on the scope of discovery in the "Ruling on Motion for Protective Order."[44]

Petitioner did so in the form of a revised notice of deposition styled "Final Notice of Deposition Under Tenn. R. Civ. P. 30.02(6)" ("Third Notice of Deposition"[45]), served on April 5, 2024. This notice preserved three previous topics (7, 9, and 10) and identified six new ones (numbered 13 through 18), interspersed with unnumbered narrative discussion that appeared to elaborate on the purpose of the topics and justify their inclusion.

The Department filed a "Second Motion for Protective Order" on April 12, 2024, arguing that the Third Notice of Deposition's additional narrative language was not appropriate because it infused legal argument into the notice and was not amenable to use as a notice on which the Department could prepare a witness to testify. This motion requested that I strike the legal contentions and proposed a final notice, retaining 7, 9, 10, and 13-18, but without the additional verbiage. On April 16, Petitioner filed "Petitioner acceptance of agreed-on questions," agreeing to the framing of the notice in the Department's revision of the Third Notice of Deposition. Exhibit 1 to the Second Motion for Protective Order is therefore the "Final Notice of Deposition." The Department then filed a "Notice Withdrawing Second Motion for Protective Order."[46]

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[44] *See id*. at pp. 4-5, 10-11.

[45] This document is referred to in some subsequent papers as the "Final Notice of Deposition" but is not so called here because it was not, in fact, the final notice of deposition served in this case.

[46] Petitioner also filed, on April 17, 2024, a "Notice to withdraw final notice of deposition under Tenn. R. Civ. P. 30.02(6)" in which he stated that the questions "restated in the department's Exhibit No. 1 of April 12, 2024 [that is, to the Second Motion for Protective Order], are proffered to the AHO as a settlement of the deposition areas of inquiry so that the case may proceed in all haste." On April 18, 2024, I entered an "Order Regarding Deposition of Respondent Under Tenn. R. Civ. P. 30.02(6)," summarizing the discussions and filings related to Petitioner's proposed deposition under Rule 30.02(6) and concluding that "Petitioner has served a final notice of deposition, the parties have agreed to a revision of that notice, and the notice is no longer subject to a motion for protective order. The deposition may proceed under the Tennessee Rules of Civil Procedure."

On April 23, 2024, Petitioner filed a "Motion for convenience letter for petitioner safety," in response to the Department seeking to delay his Rule 30.02(6) deposition until July 9 to accommodate leave taken by its counsel.[47] Petitioner asserted he would agree to this delay if the Commissioner of Revenue issued him a letter acknowledging his pending contested case. I never ruled on this motion, but Anne Warner, Senior Associate Counsel in the Department's Legal Office, issued a letter to Petitioner dated April 26, 2024, and addressed "[t]o whom it may concern" confirming that he was "involved in a contested case" regarding the Vehicle, describing the nature of Petitioner's challenge to the registration, and inviting the reader to contact her about the matter.[48]

On July 9, 2024, Petitioner deposed the Department through Tenn. R. Civ. P. 30.02(6). The Department's designated witness was Jennifer Lanfair, assistant director of the Department's Vehicle Services Division.[49]

CROSS-MOTIONS FOR SUMMARY JUDGMENT AND RELATED MOTIONS

The Department filed a motion for summary judgment on July 15, 2024. Petitioner was given time to obtain a copy of the Rule 30.02(6) deposition transcript,[50] after which he filed his own motion for summary judgment on September 27, 2024. Given the scope of Petitioner's arguments, I entered an "Order Setting Schedule for Summary Judgment" on August 23, 2024, (with a "Corrected" version entered on September 3). This order allowed each party to respond to the opposing motion and file a reply in support of their own. By November 12, 2024, briefing was

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[47] *See* "Motion for convenience letter" at pp. 1-2.

[48] A reproduction of this letter is included in Petitioner's "Motion for summary judgment" at p. 155.

[49] A transcript is included as Exhibit 10 to Petitioner's motion for summary judgment.

[50] *See* "Order Setting Status Conference on August 22, 2024" at ¶ 3.

complete.[51] Petitioner requested oral argument on these motions, and this was held on November 22, 2024.[52]

Between the filing of his motion for summary judgment and oral argument, Petitioner made two additional motions—a motion to strike notices of the Department's filing of legislative history[53] and another motion for sanctions against the Department's counsel.[54]

Between October 29 and November 5, the Department submitted three separate notices of filing, styled "Notice of Filing: Inclusion in Administrative Record of Legislative History for 2001 Public Chapter 292" and "Notice of Filing: Inclusion in Administrative Record of Legislative History for 2015 Public Chapter 511" (both filed October 29, 2024) and "Notice of Filing: Inclusion in Administrative Record of Legislative History for 2005 Public Chapter 401" (filed November 5, 2024).[55] Because Petitioner's motion to strike did not include specific legal authority that would prohibit the motion to strike, I gave Petitioner the opportunity to elaborate on his arguments. He declined this offer because it would have delayed argument on the summary judgment motions. I thus denied the motion to strike as filed.[56] On November 14, 2024, I denied the second motion for sanctions.[57]

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[51] *See* "Order Regarding Motion for Extension" (Oct. 14, 2024), regarding a brief extension of these deadlines.

[52] *See* "Order Setting Oral Argument for Cross-Motions for Summary Judgment" (Nov. 15, 2024).

[53] *See* "Motion to strike 3 notices of filing legislative record" (Nov. 5, 2024).

[54] *See* "Motion for sanctions" (Nov. 12, 2024).

[55] The notice of filing for 2005 Public Chapter 401 also includes, as a separate caption heading, "Notice of Filing: Inclusion in Administrative Record of Legislative History for 2001 Public Chapter 292." I presume this is an artifact from the earlier filing because the index of contents relates only to the 2005 bill.

[56] *See* "Order Denying Motion to Strike" (Nov. 7, 2024).

[57] *See* "Order Denying Petitioner's Second Motion for Sanctions."

PENDING MOTIONS

On April 23, 2024, Petitioner filed a "Motion for convenience letter for petitioner safety" on April 23, 2024, in response to the Department seeking to delay his Rule 30.02(6) deposition until July 9 to accommodate leave taken by its counsel. I never ruled on this motion, but an attorney for the Department issued such a letter, and the deposition was later held. Because the motion was never ruled upon, **I now deny it as moot**.[58]

FINDINGS OF FACT

1. Petitioner owns a 2000 Honda Odyssey, VIN 2HKRL1859YH575510 (the "Vehicle"), which was titled and registered to "David Jonathan Tulis TTEE UDT 8 15 22" on August 30, 2022.[59]

2. The Department has developed an online verification system to verify financial responsibility for Tennessee drivers.[60]

3. On April 19, 2023, the Department issued a letter to Petitioner regarding insurance coverage for the Vehicle (the "Request for Information"). The Request for Information stated that the Department's records indicated that Petitioner had an active registration for the Vehicle, but that the Department was unable to verify that acceptable insurance coverage was currently in place.

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[58] I did not rule on the motion at the time because the Department issued the letter of its own accord, and I make no representation here on how I might have ruled on that motion. What is important is that Petitioner pursued this "convenience letter" rather than moving to compel an earlier deposition date. The parties appeared to have worked out their scheduling issues without my involvement, and I had no cause to intercede.

[59] Declaration of Merinda Anthony ("M. Anthony Decl.") at Exh. A; Department's "Statement of Undisputed Material Facts" (hereafter, "Dept. S.M.F.") at ¶ 1 (accepted by Petitioner in his "Response statement of undisputed facts" [hereafter, "Pet. S.M.F. Resp."]).

The specific registered owner is listed as "David Jonathan Tulis TTEE UDT 8 15 22," apparently a trust for which Petitioner acts as trustee. The exact nature of this arrangement has not been elaborated in these proceedings, but the Department has not contested Petitioner's right to prosecute this case. Because Petitioner is the operator of the vehicle based on all of the facts adduced, this order generally refers to him as the owner and operator regardless of the specific legal form through which he exercises those roles.

[60] M. Anthony Decl. at Exh. B.

The Request for Information further provided that "if the information in the [Department's] system is not updated within 30 days to reflect coverage for this vehicle, you will receive additional notices from the Department," along with instructions outlining the process for submission of proof of insurance to the Department.[61]

4. A true and correct copy of the "Request for Information" referenced in ¶ 3, above, is attached to the Declaration of Merinda Anthony, submitted in support of the Department's motion for summary judgment, at Exhibit B.

5. On May 19, 2023, the Department issued a notice to Petitioner regarding insurance coverage for the vehicle (the "First Notice"). The First Notice informed Petitioner that the Department's records indicated that Petitioner had an active registration for the Vehicle, but that the Department was unable to verify that acceptable insurance coverage was currently in place for it. The First Notice further provided that "failure to provide proof of insurance within 30 days of the date of this notice will result in a $25 coverage failure fee and future correspondence, along with instructions outlining the process for submission of proof of insurance to the Department.[62]

[61] M. Anthony Decl. at ¶ 4 and Exh. B.; Dept. S.M.F. at ¶ 2. Petitioner responded to this statement of fact by "object[ing] to the form and premise of the question," but made "no objection or denial that, for respondent, this statement constitutes a material fact." Pet. S.M.F. Resp. at ¶ 2.

Tenn. R. Civ. P. 56.03 requires the responding party to respond to each of the opposing party's statements of undisputed material fact by doing one of three things: "(i) agreeing that the fact is undisputed, (ii) agreeing that the fact is undisputed for purposes of ruling on the motion for summary judgment only, or (iii) demonstrating that the fact is disputed." And a disputed fact "must be supported by specific citation to the record."

Petitioner has attempted to qualify his response by "object[ing] to the form and premise of the question," but offers no explanation for why the form and premise of Dept. S.M.F. No. 2 is flawed. Petitioner also misinterprets the statement as a question. Because Petitioner did not dispute the statement of fact and made no citation to the record that would support such a dispute, I must accept his statement that he "makes no objection or denial that, for respondent, this statement constitutes a material fact" to be agreement that the fact is "undisputed for purposes of ruling on summary judgment" within the meaning of Rule 56.03.

[62] M. Anthony Decl. at ¶ 5 and Exh. C; Dept. S.M.F. at ¶ 3. Petitioner responded to this statement of fact by "object[ing] to the form and premise of the question," but made "no objection or denial that, for respondent, this statement constitutes a material fact." Pet. S.M.F. Resp. at ¶ 3. For the reasons given in footnote 61 above, I treat Petitioner's response as agreement that the fact is "undisputed for purposes of ruling on summary judgment" within the meaning of Rule 56.03.

6. A true and correct copy of the "First Notice" referenced in ¶ 5, above, is attached to the Declaration of Merinda Anthony, submitted in support of the Department's motion for summary judgment, at Exhibit C.

7. On June 21, 2023, the Department issued a final notice to Petitioner regarding insurance coverage for the Vehicle (the "Final Notice"). The Final Notice informed Petitioner that the Department remained unable to confirm insurance coverage for the Vehicle and that Petitioner was therefore assessed a coverage failure fee of $25. The Final Notice further provided that "[f]ailure to provide proof of insurance within 30 days from the date of this notice will result in the assessment of an additional $100 coverage failure fee and suspension of your vehicle registration," along with instructions outlining the process for submission of proof of insurance to the Department.[63]

8. A true and correct copy of the "Final Notice" referenced in ¶ 7, above, is attached to the Declaration of Merinda Anthony, submitted in support of the Department's motion for summary judgment, at Exhibit D.

9. On July 21, 2023, the Department issued a vehicle registration suspension notice to Petitioner regarding the Vehicle (the "Vehicle Registration Suspension Notice"). The Vehicle Registration Suspension Notice informed Petitioner that the Department was unable to confirm insurance coverage for the Vehicle. The Vehicle Registration Suspension Notice further provided, "[y]ou have been assessed $125 in coverage failure fees, and your vehicle registration has been suspended. Two separate notices have been mailed to your attention on previous dates notifying

[63] M. Anthony Decl. at ¶ 6 and Exh. D; Dept. S.M.F. at ¶ 4. Petitioner responded to this statement of fact by "object[ing] to the form and premise of the question," but made "no objection or denial that, for respondent, this statement constitutes a material fact." Pet. S.M.F. Resp. at ¶ 4. For the reasons given in footnote 61 above, I treat Petitioner's response as agreement that the fact is "undisputed for purposes of ruling on summary judgment" within the meaning of Rule 56.03.

you of the coverage failure fees associated with failure to provide proof of insurance coverage or a verifiable exemption."[64]

10. A true and correct copy of the "Vehicle Registration Suspension Notice" referenced in ¶ 9, above, is attached to the Declaration of Merinda Anthony, submitted in support of the Department's motion for summary judgment, at Exhibit E.

11. On July 26, 2023, Petitioner submitted a request for an administrative hearing to contest the Department's suspension of his motor vehicle registration.[65]

12. As of the date of this filing, Petitioner has not submitted proof of insurance coverage for the Vehicle or other form of financial responsibility to the Department.[66]

CONCLUSIONS OF LAW

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate when no genuine issues of material fact exist, and the movant meets its burden of proving that it is entitled to a judgment as a matter of law," *White v. Bradley County Gov't*, 639 S.W.3d 568, 576 (Tenn. Ct. App. 2021),[67] and it is "a preferred vehicle for disposing of purely legal issues." *Id.* at 576-77.[68] Granting summary judgment under Tenn. R.

[64] M. Anthony Decl. at ¶ 7 and Exh. E; Dept. S.M.F. at ¶ 5. Petitioner responded to this statement of fact by "object[ing] to the form and premise of the question," but made "no objection or denial that, for respondent, this statement constitutes a material fact." Pet. S.M.F. Resp. at ¶ 5. For the reasons given in footnote 61 above, I treat Petitioner's response as agreement that the fact is "undisputed for purposes of ruling on summary judgment" within the meaning of Rule 56.03.

[65] M. Anthony Decl. at ¶ 8 and Exh. F; Dept. S.M.F. at ¶ 6. Petitioner responded to this statement of fact by "object[ing] to the form and premise of the question," but made "no objection or denial that, for respondent, this statement constitutes a material fact." Pet. S.M.F. Resp. at ¶ 6. For the reasons given in footnote 61 above, I treat Petitioner's response as agreement that the fact is "undisputed for purposes of ruling on summary judgment" within the meaning of Rule 56.03. Moreover, I have seen the letter in question, and Petitioner has presented no basis for disputing the statement.

[66] M. Anthony Decl. at ¶ 9; Dept. S.M.F. at ¶ 7. Petitioner failed to respond to this statement, and I treat it as undisputed based on the Declaration of Merinda Anthony.

[67] Citing Tenn. R. Civ. P. 56.04; *Bryant v. Bryant*, 522 S.W.3d 392, 399 (Tenn. 2017)).

[68] Citing *Hawkins v. Case Mgmt., Inc.*, 165 S.W.3d 296, 299 (Tenn. Ct. App. 2004).

Civ. P. 56 requires "that the filings supporting the motion show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* at 577. Where, as here, there are cross-motions for summary judgment, the standard of review is the same:

> Cross-motions for summary judgment are no more than claims by each side that it alone is entitled to a summary judgment. The court must rule on each party's motion on an individual and separate basis. With regard to each motion, the court must determine (1) whether genuine disputes of material fact with regard to that motion exist and (2) whether the party seeking the summary judgment has satisfied Tenn. R. Civ. P. 56's standards for a judgment as a matter of law. Therefore, in practice, a cross-motion for summary judgment operates exactly like a single summary judgment motion.

CAO Holdings, Inc. v. Trost, 333 S.W.3d 73, 83 (Tenn. 2010) (internal citations omitted).

<u>ISSUES</u>

Tennessee law establishes motor vehicle registration "[a]s a condition precedent to the operation of any motor vehicle upon the streets or highways of this state." Tenn. Code Ann. § 55-4-101(a)(1). The Tennessee Financial Responsibility Law of 1977 ("TFRL"), Tenn. Code Ann. §§ 55-12-101, *et seq*., establishes a system that determines when motorists in Tennessee are required to maintain proof of financial responsibility in relation to their operation of motor vehicles. In order to "verify financial responsibility for Tennessee drivers," the Department "has developed an online verification system,"[69] the "Electronic Insurance Verification Program (or "EIVS").[70]

The Department takes the view that "Tennessee law requires registrants to maintain liability insurance coverage or other acceptable form of financial responsibility on their vehicles and provide proof of compliance to the Department upon request."[71] The EIVS Program was

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[69] Per "Request for Information" sent by Department to Petitioner, Apr. 19, 2023. See M. Anthony, Decl., Exh. B.

[70] "Memorandum in Support of Respondent's Motion for Summary Judgment" ("Dept. Memo.") at 1.

[71] Dept. Memo. at 5 (citing Tenn. Code Ann. § 55-12-139(a) and (c)(1) and Tenn. Code Ann. § 55-12-210(a)-c)).

implemented pursuant to the Tenn. Code Ann. §§ 55-12-201, *et seq*., the James Lee Atwood Jr. Law, enacted in 2015 (the "Atwood Law").[72] When the EIVS Program identified that Petitioner did not carry liability insurance on his vehicle, and he provided neither proof of insurance, proof of an alternative form of financial responsibility, or proof of his entitlement to an exemption, the Department suspended his registration.[73]

Petitioner argues that the Financial Responsibility Law and the Atwood Law, together, do not establish Tennessee as "a pre-accident, proof of financial security required mandatory insurance for all motorists state."[74] He asserts that, "[h]aving had no qualifying accident, [he] is not subject to TFRL" and is not properly subject to the EIVS Program.[75] As amended, the petition in this case demands relief on four points: (1) evidence from the Commissioner that Petitioner has had an accident subject to § 55-12-101, *et seq*.; (2) that the Commissioner "defend the statute"; (3) a stay of execution on the revocation of Petitioner's vehicle registration or a temporary injunction rescinding the suspension; and (4) restoration of Petitioner's vehicle registration.

Point (1) was amenable to exploration through discovery, and the Department has not claimed to possess such evidence. Point (3) was addressed in Petitioner's motion for a temporary injunction, denied by my order of December 21, 2023. Point (2) may not be dictated by either Petitioner or by myself as Administrative Judge—the administration of statutes and the defense of that administration is in the charge and discretion of the Commissioner of Revenue. His Department is charged with defending this contested case and has done so. But point (4),

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[72] *See* 2015 Tenn. Pub. ch. 511, § 2; Dept. Memo. at 6.

[73] *See* Dept. Memo. at 6-7.

[74] Petitioner's "Motion for summary judgment" ("Pet. S.J. Motion") at 24.

[75] Pet. S.J. Motion at 10. By "qualifying accident," Petitioner presumably means an accident within the scope of Tenn. Code Ann. § 55-12-104. *See, e.g.*, Pet. S.M.F. at ¶ 2. I note that both Section 104 and Tenn. Code Ann. § 55-12-105 turn on the same qualifying characteristics.

demanding that Petitioner's vehicle registration be restored from suspension, refers to a specific action of the Department—the suspension of the registration—and requests specific relief in the form of restoring the registration.

The question presented by the petition is thus whether, on the facts presented, the Department's suspension of Petitioner's vehicle registration was lawful.

JURISDICTION

The Department suspended Petitioner's vehicle registration on July 21, 2023. On July 26, 2023, Petitioner mailed to the Department a "notice of appeal," styling himself as "petitioner" and "assert[ing] through timely notice his rights under the uniform administrative procedures act for a contested case hearing."[76]

The Department then convened this contested case under the authority of Tenn. Code Ann. § 67-1-105:

> [W]henever any person is aggrieved and desires a hearing with respect to the final resolution of any issue or question involved in connection with … the proposed revocation of, any certificate, license, permit, privilege or right, or relating to the confiscation of any property, or any other adverse action proposed or taken to implement any … registration law administered by the commissioner [of revenue], not including those laws relating to assessments or levies of taxes, fees, fines, penalties, interest, or the waiver of penalties, such person shall, upon written request made within ten (10) days of the action complained of, be afforded an opportunity for a formal hearing before the commissioner.

Despite expressly requesting this contested case hearing in his petition, Petitioner has, throughout the pendency of this matter, questioned the Department's authority to convene it.[77] He continues to do so even in his motion for summary judgment, asserting that "[t]his case cannot

[76] Petition at 1.

[77] *See, e.g.,* "Notice of Subject Matter Jurisdiction Challenge" (Oct. 23, 2023).

legally be heard in this court. DOR, without subject matter jurisdiction, grants petitioner a hearing in a statutory void."[78]

The Department plainly has jurisdiction to convene this contested case. Petitioner expressly requested "a contested case hearing" "under the uniform administrative procedures act." As a person "aggrieved" by the Department's suspension of his vehicle registration desiring "a hearing with respect to the final resolution of any issue or question involved in connection with … [an] adverse action proposed or taken to implement any … registration law administered by the" Commissioner of Revenue, Petitioner's request was proper under Tenn. Code Ann. § 67-1-105, and this contested case was properly convened. Despite Petitioner's unusual and repeated questioning of jurisdiction in a venue of which he willingly availed himself, I have determined to hold and decide the case so long as Petitioner wishes to pursue it. As Petitioner has declined to dismiss the petition,[79] and the Department has the authority to convene and hold this contested case—and to appoint me to serve as administrative judge[80]—I conclude that the Department's exercise of jurisdiction to convene this contested case is proper, and I may adjudicate it under the UAPA.[81]

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[78] Pet. S.J. Motion at 109.

[79] *See* "Post-Conference Order" (Oct. 25, 2023) (directing Petitioner to either dismiss the petition or file an amended petition clarifying the relief requested) and "Amended notice of appeal" (Nov. 6, 2023).

[80] "Order Denying Petitioner's Motion for Recusal" (Oct. 2, 2023).

[81] Petitioner's claim that Tenn. Code Ann. § 4-5-106(f) disclaims application to the Department of Revenue is a misreading of that statute. This subsection disclaims application of the UAPA to "Revenue rulings and letter rulings issued by the Commissioner of Revenue." These are terms of art, defined at Tenn. Code Ann. § 67-1-109. They have nothing to do with adversarial disputes of administrative actions by the Department which, again, are expressly authorized by Tenn. Code Ann. § 67-1-105.

RELIEF REQUESTED

Because my authority to hear this case is derived from Tenn. Code Ann. § 67-1-105, I can evaluate and rule upon the legality of the Commissioner's "adverse action" against Petitioner "taken to implement" the vehicle registration laws, that is, I can uphold or reverse the suspension of his vehicle registration. But even if I were to reverse the suspension and restore Petitioner's vehicle registration, I could not then "apply the balm of law as far as the harm reaches in [my] employer's fiefs, as would the commissioner if he were sitting on this case."[82] The Commissioner can reconsider the Department's construction and application of the TFRL and the Atwood Law, but through his discretion as Commissioner of Revenue, charged with the administration of those statutes, not through this or any other contested case.

The only relief I am legally authorized to provide to Petitioner is the restoration of his vehicle registration, if the Department acted unlawfully in suspending it. This means that, of the 27 demands for relief stated by Petitioner,[83] I have legal authority to order only one—item 26.[84] I have no authority to direct the Commissioner of Revenue or the Department to undertake any action other than restoring Petitioner's vehicle registration, and this authority is subject to agency review under Tenn. Code Ann. § 4-5-315.

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[82] "Reply to respondent's response to petitioner's MSJ" ("Pet. S.J. Reply") at 7. Petitioner insists that the "law authorizes" such sweeping actions but gives no citation for the proposition.

[83] Pet. S.J. Motion at 136-143.

[84] In essential character. The relief requested in this item is "…that petitioner's motor vehicle registration be restored upon payment of the annual fee, starting the day of the administrative judge's final order, as the registration expired July 2023, with the commencement date of the one-year period of privilege being the date of the order, and that a roughly $3 unpaid balance be prorated out of the amount of privilege tax due." Under Tenn. Code Ann. § 4-5-314(b), I am authorized to issue an initial order only. I note also that items 1 through 3 of Petitioner's "relief sought" are conclusions of law suggested by Petitioner rather than requests for relief. As will be seen below, I conclude that the law is contrary to these points.

ANALYSIS

Petitioner has raised a variety of objections to the Department's suspension of his vehicle registration, based on both its administration of the TFRL and the Atwood Law and on various constitutional grounds. Below, I will discuss the constitutional issues raised by Petitioner—and whether they may be addressed in this proceeding. But those issues are implicated only if the Department's suspension of Petitioner's registration was authorized by and consistent with statutory authority. I will thus address that question first.

I. STATUTORY AUTHORITY FOR THE SUSPENSION.

The Department asserts that its suspension of Petitioner's registration was within its statutory authority under Tenn. Code Ann. § 55-12-210(c)(2) (part of the Atwood Law) and Tenn. Code Ann.§ 55-5-117(a). In order to evaluate the legality of the suspension, I must first determine the scope and applicability of the TFRL and the Atwood La.

A. *Development of the TFRL.*

According to Petitioner:

> TFRL is an "after-accident" and "voluntary insurance" law. Owners of motor vehicles can buy insurance—or not. An accident-free motorist "is at liberty to own and operate a motor vehicle without any insurance coverage or with as little insurance coverage as desired." *McManus v. State Farm Mut. Auto. Ins. Co.*, 225 Tenn. at 109, 463 S.W.2d at 703. TFRL in Part 1 nowhere requires petitioner to show proof of financial security or financial responsibility absent a qualifying wreck, or decision by the commissioner of safety.[85]

Before 2001, Petitioner would have been correct—sanctions under the TFRL were not "involved unless and until the owner or operator is involved in an accident resulting in bodily injuries or property damage in excess of $100.00." *McManus v. State Farm Mut. Auto Ins. Co.*,

[85] Pet. S.J. Motion at 13.

463 S.W.2d 702, 703 (Tenn. 1971).[86] And it remains the case that whenever a report is made to the Commissioner of Safety that there has been "an accident occurring in this state that has resulted in bodily injury, or death, or damage to the property of any one (1) person in excess of one thousand five hundred dollars ($1,500)," and the Commissioner of Safety "determine[es] that there is a reasonable possibility of a judgment against the owner, operator, or both, and" they "receiv[e] notice of a claim filed against the owner, operator, or both," the driver's license to drive and the vehicle registration shall be suspended unless the driver demonstrates an acceptable level of financial security. Tenn. Code Ann. § 55-12-105(a).

But in 2001, the General Assembly amended the TFRL by adding Section 55-12-139, which included subsection (a):

> Every vehicle driven on the highways of this state must be in compliance with the financial responsibility law.

2001 Tenn. Pub. Acts 292, § 1. The meaning of this language is unmistakable—the TFRL now applied to every vehicle driven on Tennessee highways, not just those that had been involved in a "qualifying accident" under Tenn. Code Ann. § 55-12-105 (consistent with the Department's reference, I will refer to this as the "2002 Language" because it went into effect on January 1, 2002[87]).

I note that the term "vehicle" is not defined in the TFRL, but it must be at least as expansive as "motor vehicle," which means "every self-propelled vehicle that is designed for use upon the highway, including trailers and semitrailers designed for use with motor vehicles, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon

[86] This language appears immediately before Petitioner's quotation from *McManus* in the block quotation above.

[87] *See* 2001 Tenn. Pub. Acts 292, § 10.

rails, except traction engines, road rollers and farm tractors" but "does not include 'motorized bicycle' as defined in § 55-8-101." Tenn. Code Ann. § 55-12-102(6).

As a result of the 2002 Language, it is indisputable that Tennessee was no longer an after-accident state as of January 1, 2002.

In 2005, the General Assembly revised the language of Tenn. Code Ann. § 55-12-139(a), replacing it with the following:

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

2005 Tenn. Pub. Acts 401, § 1. This language (the "2005 Language") does two things:

- It revises the universe of vehicles covered by the provision from:
  - "Every vehicle driven on the highways of this state" to
  - "[E]very vehicle subject to the registration and certificate of title provisions"
- It revises the language used to describe the obligation imposed on those vehicles from:
  - "[B]e in compliance with the financial responsibility law" to
  - "This chapter shall apply."

The first revision is simple enough—it simply changes which vehicles are affected by Section 139(a). But Petitioner's view that Tennessee remains an after-accident state under the current version of Section 139(a) can prevail only if the 2005 Language fully reverses the 2002 Language. This premise does not follow from the legislative actions.

In responding to the Department's reliance on Section 139, Petitioner argues that "Sect. 139 does not change the subject of authority nor scope of the statute from that described by the courts,"[88] that is, the description of Tennessee as an after-accident state in *McManus* and other

[88] Pet. S.J. Motion at 144.

cases.[89] According to Petitioner, "Sect. 139 adds teeth to enforcement, but doesn't change the 'financial responsibility' concept in Part 1."[90]

This reading is belied by the 2002 Language. The language can be read in only one way—that the General Assembly was requiring every vehicle driven on Tennessee highways to be in compliance with the financial responsibility laws with no mention of an accident as a condition precedent. For Petitioner to be correct that Tennessee is still an after-accident state today, after the enactment of Section 139(a), the revision from "be in compliance with the financial responsibility law" to "[t]his chapter shall apply" must be read as a change from applying the TFRL regardless of an accident to restoring the pre-accident regime. The 2005 Language cannot support that interpretation.

If the General Assembly, only three years after changing the TFRL from an after-accident regime to one requiring financial responsibility as a prerequisite for almost all vehicles regularly using Tennessee roads, intended to reverse that course, it makes no sense to merely massage the verbiage of Section 139(a) when more obvious means are at hand, including repealing Section 139(a) entirely or making a clear pronouncement specifically referencing an accident as a condition precedent to the application of the TFRL.

The General Assembly did not employ those means. Instead, it modified the universe of vehicles covered by the subsection and reiterated that they are subject to "this chapter," i.e., the requirements of financial responsibility laid out in the chapter. Section 139(a) remains a clean break between the after-accident regime that prevailed before 2001 and the current era in which financial responsibility is required for operating vehicles on Tennessee highways.

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[89] *See id*. at 35-44 for his reliance on this case law.

[90] *Id*. at 144.

The Department posits that the 2005 Language "was intended to clarify that the compulsory requirement was applicable only to ordinary motor vehicle types driven on Tennessee roads subject to registration, not special mobile equipment, implements of husbandry, or other commercial machinery for which incidental travel on roadways is sometimes required and for which registration is not required" and asserts that "[t]he imposition of the compulsory financial responsibility requirement in 2002 had caused confusion within the insurance industry regarding the manner in which liability policies were required to cover these types of vehicles."[91] The Department supports these explanations with a citation to the legislative history for 2005 Tenn. Pub. Acts 401.[92]

I do not rely on the legislative history proffered. Instead, I conclude as a matter of law that the plain language and history of Section 139(a) make clear that the General Assembly's intent was to expand the application of the TFRL to, first, "[e]very vehicle driven on the highways of this state" and then to "every vehicle subject to the registration and certificate of title provisions." The Department's explanation that this created confusion for things like agricultural vehicles and vehicles that are operated on the highways only incidental to their use does provide a plausible explanation for why the General Assembly revisited Section 139(a) so soon after enacting it, but this is clear from the statutory language itself—those sorts of vehicles are those not subject to registration and thus exactly the sort of vehicles removed from the scope of Section 139(a) by the 2005 Language. *See* Tenn. Code Ann. § 55-3-101(a).[93]

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[91] Dept. Memo. at 12.

[92] *See* Dept. Memo at 12-13. This legislative history was included in the administrative record of this contested case in the form of audio recordings submitted under several notices of filing on October 29 and November 4, 2024.

[93] This provision exempts from the registration requirement:

> (1) Vehicles driven or moved upon a highway in conformance with chapters 1-6 of this title relating to manufacturers, transporters, dealers, lienholders, or nonresidents;

B. *Effect of the Atwood Law.*

1. The Atwood Law.

The General Assembly enacted the Atwood Law in 2015.[94] The purpose of law was "to develop and implement an efficient insurance verification program … in order to verify whether the financial responsibility requirements of this chapter have been met with a motor vehicle liability insurance policy," and to empower the Commissioner of Revenue to implement the program. Tenn. Code Ann. § 55-12-202. At the time, the Commissioner already administered—and continues to administer—motor vehicle registration in Tennessee. *See* Tenn. Code Ann. § 55-2-101; 2007 Tenn. Pub. Acts 484, § 2.

Among other specifications, the verification program was required to meet "IICMVA[95] specifications and standards," Tenn. Code Ann. § 55-12-205(1), allowing insurers to either "utilize

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(2) Vehicles that are driven or moved upon a highway only for the purpose of crossing the highway from one (1) property to another;

(3) Any implement of husbandry;

(4) Any special mobile equipment;

(5) … any vehicle of a type subject to registration owned by the government of the United States;

(6) … a foreign vehicle that is subject to the registration provisions of this state, if the nonresident owner has a valid foreign certificate of title and certificate of registration and if the vehicle is to remain registered in the foreign state as well as in this state;

(7) Subject to the approval of the commissioner, … a vehicle that is part of a proportionally registered fleet in this state if the owner has a valid certificate of title in another state and the vehicle is engaged in interstate commerce;

(8) Motorized bicycles, except when voluntarily registered under § 55-4-101; and

(9) … [a] manufactured home is [that] affixed to real property in accordance with § 55-3-128.

[94] *See* 2015 Tenn. Pub. Acts 511, § 1.

[95] Insurance Industry Committee on Motor Vehicle Administration. *See* Tenn. Code Ann. § 55-12-203(5).

the IICMVA model[96]" to provide insurance verification (subject to conditions set out in Tenn. Code Ann. § 55-12-205(3)(A)), or for insurers that "choose[ ] not to utilize the IICMVA model, to "provide to the department of revenue, or its designated agent, a full book of business[97] by the seventh day of each calendar month." Tenn. Code Ann. § 55-12-207(a). As noted above, the Department refers to the verification system mandated by Section 205 as "EIVS."

Under the Atwood Law, when the Department learns—from either the IICMVA model or the full book of business process—"that a motor vehicle is not insured," it is directed to advise the owner of the vehicle that they have thirty days to provide the Department one of four things:

> (A) The owner or operator's proof of financial security in a form approved by the department of revenue;
>
> (B) Proof of exemption from the owner or operator's financial security requirements under this chapter;
>
> (C) Proof that the motor vehicle is no longer in the owner's possession; or
>
> (D) A statement, under penalty of perjury, that the vehicle is not in use on any public road.

Tenn. Code Ann. § 55-12-210(a)(1).

According to Petitioner, "Atwood lets DOR 'develop and implement an efficient insurance verification program' using corporate insurers' databases, but only when a motor vehicle liability policy is used for POFR.[98] The verification of coverage is needed to determine whether a vehicle

[96] "'IICMVA Model' means the online insurance verification system model created by the IICMVA." Tenn. Code Ann. § 55-12-203(6).

[97] "'Full book of business' means a business record download of an automobile liability insurer made in accordance with IICMVA Insurance Data Transfer Guide Specifications that contains the data elements described in § 55-12-207(c)(1)."

[98] I presume "POFR" means "proof of financial responsibility."

owner under duty to have insurance coverage in Part 1 is actually covered."[99] There are some flaws here in Petitioner's summary. For example, the Atwood Law is *not* limited to situations "when a motor vehicle liability policy is used for POFR." Section 210 is clear that the Department's identification of a lack of insurance coverage requires it to provide notice to the owner that they must document financial responsibility through insurance or otherwise.[100]

But the fundamental problem with Petitioner's reasoning is his conception of the "duty" imposed by Part 1. As explained above, the General Assembly ended the after-accident regime effective in 2002. Since that time, owners of all vehicles subject to registration in Tennessee must be able to demonstrate financial responsibility as a condition of their continuing registration. Because Petitioner misses this change, his conception of the Atwood Law as merely a tool allowing the Commissioner of Revenue to identify insurance coverage for vehicles involved in accidents (and, presumably, moving violations within the ambit of Tenn. Code Ann. § 55-12-139(b)(1)(A)) is also incorrect. Because Section 55-12-139(a) imposes financial responsibility requirements on all vehicles subject to registration, the directive in Tenn. Code Ann. § 55-12-210(a) to identify vehicles without liability insurance coverage applies to all of those vehicles as well.

For the same reason, Petitioner misses the meaning of Tenn. Code Ann. § 55-12-214, which provides that "[n]othing in this part [the Atwood Law] shall alter the existing financial responsibility requirements in this chapter." Petitioner cites this section as support for this claim that "[t]he Atwood amendment adds no new powers to revoke a registration other than those given

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[99] Pet. S.J. Motion at 11.

[100] "It there is evidence … that a motor vehicle is not insured," the Department "shall … provide notice to the owner … that the owner has thirty (30) days from the date of the notice to provide to the" Department either proof of financial security (not limited to liability insurance), proof of exemption from financial responsibility, proof that the owner no longer possesses the vehicle, or a sworn statement the vehicle is not in use on public roads. Tenn. Code Ann. § 55-12-210(a)(1). The lack of insurance coverage essentially requires a vehicle owner to address financial responsibility, which can be met through providing proof of liability insurance coverage or through other means.

to departments of safety and revenue in Part 1 of the law." But, again, this begs the question of what Part 1—the TFRL—requires in the wake of the enactment of Tenn. Code Ann. § 55-12-139(a). Per Section 214, the Atwood Law does not change the universe of vehicles to which the TFRL applies, but that universe was already expanded by the enactment of Section 55-12-139(a) in 2001 (the 2002 Language) and retracted (to a limited extent) by the 2005 Language limiting the TFRL's application to vehicles subject to the registration laws.

Based on the plain language of Tenn. Code Ann. § 55-12-139(a) and the sequence of its initial version (the 2002 Language) and its revision (the 2005 Language), I conclude as a matter of law that all motor vehicles subject to Tennessee's vehicle registrations and certificate of title provisions are subject to the requirements of the Tennessee Financial Responsibility Law of 1977. I further conclude as a matter of law that the Atwood Law directs the Department to establish the EIVS Program and operate to identify uninsured vehicles and begin the notification process contained in Tenn. Code Ann. § 55-12-210 by which vehicle owners must either demonstrate compliance with the financial responsibility laws or have their vehicle registrations suspended or revoked.

2. *Financial Responsibility Alternatives.*

To be clear, my conclusion above does not mean that Tennessee requires all motorists to obtain liability insurance. Financial responsibility and security, as contemplated in the TFRL and the Atwood Law, can be established through other means, including a cash deposit of $65,000 or the filing of a bond for $65,000. *See* Tenn. Code Ann. § 55-12-102(12)(D)(i) (defining "proof of financial responsibility" for periods after December 31, 2022).

Petitioner dismisses these options, claiming that "[t]commissioner has no authority to make such demand, nor to collect, bank nor disburse such money. Petitioner, with an excellent driving

record, finds no corporate surety bond available. Cash payments under TFRL are remitted to safety. § 55-12-105(b)(2) and § 55-12-102(12)(A-D)."[101]

First, the Commissioner certainly has authority to offer these options for proving financial responsibility—they are included in the TFRL as explained above. And the Atwood Law simply requires compliance with financial responsibility, not that the cash deposit be made with the Commissioner of Revenue.

Second, even if Petitioner is unable to secure a bond, that does not excuse him from compliance.[102] All the options for proving financial responsibility, including liability insurance, pose some financial burden on drivers. But that is precisely the point of the requirements. "The purpose of Tennessee's Financial Responsibility Law is to protect innocent members of the public from the negligence of motorists on the roads and highways," and the laws are specifically "concerned with the ability of an automobile driver to pay for bodily injury and property damage for which he may be legally liable." *Purkey v. American Home Assurance Company*, 173 S.W.3d 703, 706 (Tenn. 2005) (quoting *Schultz v. Tenn. Farmers Mut. Ins. Co.*, 404 S.W.2d 480, 484 (Tenn. 1966)).

If someone is unable to meet the financial burden of proving financial responsibility, their ability to pay for damages they may cause in the operation of their vehicle is necessarily also in question. It is the intent of the General Assembly in enacting the TFRL to bar such motorists from operating on the highways of this State (and in enacting the Atwood Law to make the State's ability to enforce compliance with these requirements more efficient). And the General Assembly has the authority to require proof of financial responsibility compliance because driving on those

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[101] Pet. S.J. Motion at 13.

[102] Petitioner recounts his unsuccessful efforts to obtain a quote for a surety bond in his "Affidavit of inability to purchase surety bond," filed February 22, 2024.

highways is not a fundamental right. *See State v. Booher*, 978 S.W.2d 953, 956 (Tenn. Crim. App. 1997) (citations omitted).

I do note that the verbiage in the "Request for Information" issued to Petitioner by the Department is, perhaps, inartful. This notice stated that "Tennessee's Financial Responsibility Law requires motor vehicle owners to maintain proof of liability insurance coverage or a verifiable exemption." M. Anthony Decl. at Exh. B. This may be read to lump alternative forms of financial responsibility or security within the scope of "verifiable exemption," but that is not legally correct. An exemption relieves a vehicle owner of compliance with the financial responsibility laws, whereas the non-insurance means of establishing financial responsibility are co-equal means of compliance, not exceptions or exemptions.

But even if this language in the "Request for Information" misled Petitioner about the Department's position on compulsory insurance, that position has been clarified and correctly stated on repeated occasions, including in an August 1, 2023, letter from the Department's chief of staff, Courtney Swim, in which Ms. Swim explained that "[t]he EIVS Program aims to ensure that all vehicles operating on Tennessee roads are covered by adequate financial security. While maintaining liability coverage is the most common form of financial security, registrants may also elect to procure financial security in the form of a bond, cash deposit, or other qualifying means. *See* Tenn Code Ann. § 55-12-119." As Ms. Swim's letter makes clear, what is compulsory is financial responsibility, not liability insurance.

C. *The Complementary Operation of the TFRL and the Atwood Law.*

Petitioner insists that, under his conception of the TFRL and the Atwood Law, "the puzzle pieces fit together. In the agency's scheme, the parts don't fit."[103] But "[i]t is the Department's

[103] Pet. S.J. Motion at 83.

position that the General Assembly enacted the Atwood Law to create a separate enforcement mechanism for the financial responsibility requirements that operates independently from the post-accident reporting regime overseen by DSHS under Tenn. Code Ann. §§ 55-12-104-106."[104]

I agree with the Department. As I have stated previously:

> It is simply not plausible to conclude that, with the suspension grounds and process described in Tenn. Code Ann. §§ 55-12-104 and 105 already in place, the General Assembly would describe a separate process in Tenn. Code Ann. § 55-12-210 that makes no mention of the Department or Commissioner of Safety or of accidents and yet intend the separate process to operate only in conjunction with the Department of Safety and the after-accident regime.
>
> Nothing in Tenn. Code Ann. § 55-12-210 contradicts anything in Tenn. Code Ann. §§ 55-12-104 to 106. Both may operate fully in parallel with the other. Under Tenn. Code Ann. §§ 55-12-104 to 106, suspension will occur under certain circumstances occurring after a motor vehicle accident. Under Tenn. Code Ann. § 55-12-210, suspension may occur under an entirely different set of circumstances—the identification by the Department that a vehicle owner does not maintain liability insurance on the vehicle and fails to otherwise demonstrate financial responsibility satisfactory under the statute (or a lack of applicability of the statute).[105]

In other words, the suspension mechanisms in the TFRL continue to operate independently of those in the Atwood Law because there is no reason for the Department of Safety to wait for the EIVS Program to independently identify a vehicle involved in an accident as uninsured before pursuing financial responsibility compliance when an accident is reported under Tenn. Code Ann. § 55-12-104 (or subject to the notice requirements in Tenn. Code Ann. § 55-10-106[106]). And conversely, given that the TFRL applies to all vehicles subject to the registration laws, there is no

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[104] "Department's Response in Opposition to Petitioner's Motion for Summary Judgment" ("Dept. Resp.") at 11.

[105] Order Denying Injunction at 10.

[106] Incidents subject to notice to the police under Tenn. Code Ann. § 55-10-106 are expressly subject to financial responsibility compliance under Tenn. Code Ann. § 55-12-139 under subsection (b)(1)(B).

reason for the Department of Revenue to wait for an accident to occur before using the EIVS Program to identify uninsured vehicles.

Two factors—(1) the departure from the after-accident regime effected by Tenn. Code Ann. § 55-12-139(a), and (2) the operation of the TFRL and the Atwood Law to create independent and parallel suspension/revocation processes—combine to address the objections Petitioner presents with respect to the fit of these statutory schemes as "puzzle pieces." The provisions that Petitioner insists are "abrogated" under the Department's construction of the Atwood Law[107] are, instead, simply part of a parallel, independent process for initiating compliance with the financial responsibility laws.

Petitioner insists that his identification of "29 abrogations of law" detailed in his "Brief on abrogated laws" "should be considered as accepted" because the Department provided "[n]o correctives. No rebuttal. The analysis should be considered as accepted."[108] This is not a correct statement of procedure and Petitioner cites no authority for this proposition. No party is required to respond to every point raised by an opposing litigant, and to prevail on a motion for summary judgment, Petitioner must demonstrate that he is entitled to judgment as a matter of law based on the undisputed material facts documented in the record regardless of the arguments made in response to his motion.

Nor have I addressed each and every one of the ostensible "abrogations of law" in this order. It is sufficient to my ruling that the statutes on which the Department relies and which bear directly on the question of its statutory authority to suspend Petitioner's registration operate

[107] *See generally* Pet. S.J. Motion at 105-112 and Petitioner's "Brief on abrogated laws in support of motion for summary judgment."

[108] Pet. S.J. Reply at 5.

together *in pari materia* without conflict and expressly authorize the Department to take the action it took. For all the reasons provided here, I conclude that they do.[109]

D. *Motor Vehicle versus Automobile.*

Nothing in the foregoing analysis is disturbed by the distinction Petitioner appears to draw between an "automobile" that can be operated for private use without registration and a "motor vehicle" subject to registration. He claims the Department lacks "authority to revoke the registered status of the motor vehicle, allowing its status to lapse into that of an automobile"[110] and that without vehicle registration, "all he has been able to enjoy today is private locomotion in his automobile, which use by law is not implicated by regulation."[111]

There is simply no authority for this proposition. "The 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." *Booher*, 978 S.W.2d at 956 (citations omitted). Per Tenn. Code Ann. § 55-4-101(a)(1), Tennessee requires that any vehicle—necessarily including any "self-propelled vehicle that is designed for use upon the highway"—be registered as a condition of being allowed to operate on the streets and highways of Tennessee. Because the Vehicle at issue here is a "self-propelled vehicle that is designed for use upon the highway," I conclude as a matter of law that it is a motor vehicle and thus subject to Tennessee's registration laws, regardless of whether it is actually registered and regardless of whether Petitioner would characterize its use as commercial, non-commercial, private, or otherwise.

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[109] I note that I have addressed some of these "abrogations" elsewhere in the course of these proceedings. For instance, I addressed Abrogation No. 11 ("Exemptions Denied," pp. 14-18) in my Order Denying Injunction (*see* p. 10). Time and again, what Petitioner sees as a "marooned" law is, in fact, something that is part of one parallel compliance process and not relevant to the other.

[110] Pet. S.J. Motion at 15.

[111] *Id*. at 33.

E. *Petitioner's Financial Responsibility Case Authority*.

Petitioner has offered a raft of case authority for the proposition that Tennessee is an after-accident state with respect to proof of financial responsibility.[112] But in its response, the Department points out that "the vast majority of the cases cited in the Petitioner's Motion were decided prior to the enactment of Tenn. Code Ann. § 55-12-139 in 2002, which imposed the mandatory financial responsibility requirement on all vehicles registered for on-road use."[113] The Department is correct that cases applying versions of the financial responsibility laws as they stood before the enactment of Section 139(a) have no bearing on the construction of the TFRL after Section 139 was enacted. Courts did not establish Tennessee as an "after-accident" state *sua sponte* through their own power, they construed and recognized that this was the consequence of the State's financial responsibility statutes in effect at the times relevant to those decisions. The courts in these cases were applying the law as written and passed by the General Assembly. With the enactment of Section 139(a), the "after-accident" holdings in *McManus* and the other pre-2002 decisions cited by Petitioner were superseded by statute.

And the handful of post-2002 decisions Petitioner offers as supporting his view that the after-accident regime persists do not, in fact, do so.[114] In *Tennessee Farmers Mutual Insurance Company v. Debruce*, 2018 WL 3773912 (2018) (rev'd on other grounds, 586 S.W.3d 901 (Tenn. 2019)), the Court of Appeals clearly states that "Tennessee law requires drivers to maintain acceptable proof of financial responsibility as defined by the Tennessee Financial Responsibility Law of 1977," *Debruce*, 2018 WL 3773912 at *6, and distinguishes between this and liability

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[112] *See generally* Pet. S.J. Motion at 35-44.

[113] Dept. Resp. at 8. These cases are listed in the Department's summary judgment response at footnote 8 on page 9.

[114] *See* Dept. Resp. at 10-11.

insurance, noting that the TFRL does not "by its express terms, require drivers to obtain liability insurance in order to comply, the Law clearly contemplates that most drivers will comply by purchasing liability insurance." *Id.* (quoting *Purkey v. Am. Home Assur. Co.*, 173 S.W.3d 703, 706-707 (Tenn. 2005). Contrary to Petitioner's characterization,[115] nothing in the language Petitioner quotes from *Debruce* mentions "after-accident" or otherwise characterizes the TFRL in that way.

In *American Home Assurance*, the Tennessee Supreme Court focused on financial responsibility compliance after an accident because the situation presented *involved* an accident. *See American Home Assurance*, 173 S.W.3d at 704. As explained above, accidents remain an independent basis for requiring financial responsibility compliance, and the Court invoking that basis when an accident had actually occurred does not stand for the proposition that no other basis exists.[116]

Neither *Debruce* nor *American Home Assurance* stand for the proposition that the "after-accident" character of the TFRL survived the enactment of Tenn. Code Ann. § 55-12-139, and the rest of Petitioner's authority is superseded by the enactment of that statute. I conclude that there is no case law that contravenes my construction of the TFRL and the Atwood Law as applying the financial responsibility requirements to all vehicles subject to registration.[117]

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[115] *See* Pet. S.J. Motion at 43.

[116] Petitioner also cites two federal cases from after 2002. *Robinson v. Purkey*, 326 F.R.D. 105 (M.D. Tenn. 2018) (*see* Pet. S.J. Motion at 44), largely restates the discussion of the TFRL from *American Home Assurance* discussed above. And in *Freddie J. Cook, et al, v. Hughes*, 2009 WL 77457 (E.D. Tenn. 2009) (*see* Pet. S.J. Motion at 43), a magistrate judge quotes at length from *Burress v. Sanders*, 31 S.W.3d 259 (Tenn. Ct. App. 2000), a case that predates Section 55-12-139.

[117] I would also note that the General Assembly failing to pass purportedly similar legislation before 2001 would have no bearing on the construction of the TFRL or the Atwood Law. Petitioner insists that "[a] 1999 bill to make [compulsory insurance or pre-crash financial responsibility] obligatory on all registrants, the 'mandatory motor vehicle insurance act of 1999,' HB 244 and SB 292, was defeated." *See* Pet. S.J. Motion at 35. Taking this statement as true for the sake of ruling on these motions (Petitioner has not included a copy of this bill or any record of its fate in the General Assembly), it is irrelevant. There is no reason to infer anything about the intent of a later General Assembly

II. THE DEPARTMENT'S COMPLIANCE WITH THE TFRL AND THE ATWOOD LAW.

I have concluded that the TFRL and the Atwood Law together authorize and direct the Department of Revenue to create the EIVS Program and use it to identify uninsured vehicles. And I have concluded that Tenn. Code Ann. § 55-12-210 specifically directs the Department, once it has identified those vehicles, to initiate a process through which vehicle owners can either document their compliance with the financial security requirements or have their vehicle registrations suspended or revoked. I must now determine whether the Department's actions in Petitioner's case complied with its statutory authority to issue the suspension. I conclude that they did and that the Department properly and lawfully suspended Petitioner's vehicle registration under Tenn. Code Ann. § 55-12-210.

Section 55-12-210 provides that, if the Department's insurance verification program indicates "that a motor vehicle is not insured, the department of revenue shall, or shall direct its designated agent to, provide notice to the owner of the motor vehicle that the owner has thirty (30) days from the date of the notice to provide to the department of revenue" with one of four indications that they have satisfied the financial responsibility obligation:

> (A) The owner or operator's proof of financial security in a form approved by the department of revenue;
>
> (B) Proof of exemption from the owner or operator's financial security requirements under this chapter;
>
> (C) Proof that the motor vehicle is no longer in the owner's possession; or
>
> (D) A statement, under penalty of perjury, that the vehicle is not in use on any public road.

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from a previous General Assembly's inaction, even on identical legislation (and Petitioner has not established that the legislation *was* identical).

Tenn. Code Ann. § 55-12-210(a)(1).[118] This notice must also advise the recipient that failure to comply will subject the owner to a $25 "coverage failure fee." Tenn. Code Ann. § 55-12-210(a)(2). Before issuing this notice, the statute permits the Department to first issue a "request for information to the owner of the motor vehicle to aid in determining whether the vehicle is uninsured." Tenn. Code Ann. § 55-12-210(a)(3).

It is undisputed that the Department issued what it terms a "Request for Information."[119] This request appears to be discretionary as the statute provides that the Department "is authorized" to issue it, but not directed or otherwise required to do so.

It is undisputed that the Department issued what it terms a "First Notice."[120] The First Notice advised Petitioner that the Department's records showed that he had registered the Vehicle but that the Department could not verify that he had "acceptable insurance coverage" in place. It directed Petitioner to a website—www.DriveInsuredTN.com—to complete an online "Request for Information" questionnaire, advising Petitioner that, at this website, he would "also be able to report an exemption or a change in vehicle ownership." Finally, the First Notice explained that "[f]ailure to verify insurance coverage or exemption within 30 days will result in a $25 coverage failure fee and possible suspension of your vehicle registration."

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[118] The forms contemplated in subsection (A) are from Tenn. Code Ann. § 55-12-119:

> (1) A certificate of insurance as provided in § 55-12-120;
>
> (2) A bond as provided in § 55-12-102;
>
> (3) A deposit in cash with the commissioner of no less than the amount specified in § 55-12-102; or
>
> (4) A certificate of self-insurance, as provided in § 55-12-111.

[119] *See* Finding of Fact Nos. 3 and 4, *supra*. The "Request for Information" is Exhibit "B" to the Declaration of Merinda Anthony.

[120] *See* Finding of Fact Nos. 5 and 6, *supra*. The "First Notice is attached as Exhibit "C" to the Declaration of Merinda Anthony.

Consistent with Tenn. Code Ann. § 55-12-210(a), the First Notice thus explained the consequences for failing to maintain insurance on the Vehicle and for not responding to the notice while providing an opportunity to advise the Department, through the website, of either proof of insurance or a valid exception to obtaining insurance. And there is no dispute that the prerequisite facts for issuing this notice existed—Petitioner owned the Vehicle in question and has not maintained liability insurance on it.[121]

If, in response to the notice described in Tenn. Code Ann. § 55-12-210(a)(1), "an owner of a motor vehicle fails to provide satisfactory proof or a statement as described in subsection (a), the department of revenue shall" impose the $25 fee and "[p]rovide a notice to the owner of the motor vehicle stating that the owner must pay the coverage failure fee described in subdivision (b)(1)(A) and provide satisfactory proof or a statement as described in subsection (a) within thirty (30) days of the date of the notice." Tenn. Code Ann. § 55-12-210(b)(1). This notice must also "include a statement that if the owner of the motor vehicle fails to comply with the requirements set forth in the notice, the owner of the motor vehicle shall be subject to a one hundred-dollar continued coverage failure fee and suspension or revocation of the owner's motor vehicle registration." Tenn. Code Ann. § 55-12-210(b)(2).

There is no dispute that the Department issued what it terms a "Final Notice" to Petitioner.[122] This notice advised Petitioner that "you are being assessed a $25 coverage failure fee" and that "[f]ailure to provide proof of insurance within 30 days from the date of this notice will result in the assessment of an additional $100 coverage failure fee and suspension of your vehicle registration." The notice also directed Petitioner to the same website to "verify proof of

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[121] *See* Finding of Fact Nos. 1 and 12, *supra*.

[122] *See* Finding of Fact Nos. 7 and 8, *supra*. The "Final Notice" is attached as Exhibit "D" to the Declaration of Merinda Anthony.

current auto liability insurance coverage" or to "report an exemption or a change in vehicle ownership."

Consistent with Tenn. Code Ann. § 55-12-210(b), the Final Notice thus explained that the $25 fee had been imposed and that Petitioner had 30 days to provide proof of liability insurance on the vehicle (or to identify a statutorily designated exception to that requirement) or face an additional $100 coverage failure fee and suspension of vehicle registration.

Section 55-12-210 further provides that "[if] the owner of the motor vehicle fails to comply with the notice described in subdivision (b)(1)(B)," the Department shall impose the $100 coverage failure fee, "suspend or revoke the motor vehicle owner's registration," and "provide notice to the motor vehicle owner of the legal consequences of operating a motor vehicle with a suspended or revoked registration and without owner or operator's proof of financial security as required by this chapter, and instructions on how to effect the reinstatement of the motor vehicle owner's registration." Tenn. Code Ann. § 55-12-210(c).

There is no dispute that the Department issued what it terms a "Vehicle Registration Suspension Notice."[123] This notice advised that Petitioner had "been assessed $125 in coverage failure fees, and your vehicle registration has been suspended." Because of this suspension, the notice explained "that you may not drive your vehicle while your registration is suspended. Driving a vehicle without a current registration is a Class C Misdemeanor (T.C.A. § 55-3-102). Tennessee requires registration of all vehicles operating on the streets or highways of the state (T.C.A. § 55-4-101)." The notice also referred Petitioner to the www.DriveInsuredTN.com website in order to reinstate his vehicle registration as well as instructions on how to challenge the suspension.

[123] *See* Finding of Facts Nos. 8 and 9. The "Vehicle Registration Suspension Notice" is attached as Exhibit "E" to the Declaration of Merinda Anthony.

Consistent with Tenn. Code Ann. § 55-12-210, the Vehicle Registration Suspension Notice thus advised Petitioner of the fees assessed against him, the suspension of his vehicle registration, and provided instructions on how to reinstate his registration.

In summary, there is no dispute that Petitioner registered the Vehicle and that he maintained no liability insurance on it. There is also no dispute that the Department became aware of these facts through its EIVS Program. At this point, Tenn. Code Ann. § 55-12-210 directs the Department to issue a series of notices designed to advise a vehicle owner of the consequences for both failing to respond to the notices and for failing to establish their financial responsibility. There is no dispute that these notices were issued, and I conclude as a matter of law that they satisfied the directives of Tenn. Code Ann. § 55-12-210.

Finally, Tenn. Code Ann. § 55-12-210(c) directs the Department to suspend (or revoke) a vehicle registration for a vehicle owner who fails to provide proof of financial responsibility (or another form of compliance under the statute) even after receiving the notices described in Tenn. Code Ann. § 55-12-210(a) and (b). There is no dispute that Petitioner failed to do so and continued to fail to maintain liability insurance on the Vehicle.[124]

I conclude that the Department has thus established, as a matter of law, that Petitioner did not comply with the TFRL and that it was empowered and directed by statute to suspend his registration based on the undisputed material facts established in this case.

[124] Petitioner complains that the suspension notice references the Department's authority to suspend registration under Tenn. Code Ann. § 55-5-117(a), but that those bases do not cover his circumstances. *See* Pet. S.J. Motion at 16-17. I agree with the Department (*see* Dept. Resp. at 6-7) that Section 55-5-117(a)(1) does cover Petitioner—because he was not compliant with the TFRL, his registration was "erroneously issued." And regardless, Tenn. Code Ann. § 55-12-210 provides direct, clear authority for suspension under these circumstances.

III. PETITIONER'S CONSTITUTIONAL CLAIMS

Petitioner has not only argued that the Department's suspension of his registration is contrary to the meaning of the financial responsibility statutes but that it is in conflict with the state and federal constitutions. I have concluded that the Department's construction of the statutes does authorize the suspension of vehicle registrations under the circumstances presented here, i.e., that the Department has correctly construed the financial responsibility statutes. And I have concluded that the Department complied with the requirements in those statutes when it suspended Petitioner's registration.

But even if those conclusions are correct, if either the state or federal constitution prohibits the General Assembly from allowing registration suspensions in this fashion, the suspension would be illegal.

> A constitutional challenge to a statute may be either facial or as-applied. In a facial challenge, the plaintiff contends that there are no circumstances under which the statute, as written, may be found valid. In contrast, in an as-applied challenge, the plaintiff contends that the statute is unconstitutional as construed and applied in actual practice against the plaintiff under the facts and circumstances of the particular case, not under some set of hypothetical circumstances.

Fisher v. Hargett, 604 S.W.3d 381, 396-97 (Tenn. 2020) (citations omitted).

Petitioner raises a number of arguments rooted in either or both of the state and federal constitutions, but his primary arguments go to disputing the Department's construction and administration of the statutes, rather than seeking to invalidate the Department's use of the EIVS program across the board as violative of any particular constitutional provision. In fact, rather than abolish the EIVS Program in its entirety, Petitioner specifically seeks to have the Department restrict its use of the program to comport with what he conceives as its statutory basis.

But Petitioner does not clearly address whether the TFRL and Atwood Law would be facially constitutional if the Department's construction is correct. Tennessee courts have held that

administrative agencies are not authorized to rule on facial constitutional challenges to statutes or rules. *See Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446 (Tenn. 1995). As an administrative judge appointed to that role by the Commissioner of Revenue, my authority is that of the administrative agency that has convened this contested case, the Department of Revenue, and I have no authority to rule on a facial constitutional challenge. Therefore, if any of Petitioner's claims constitute facial challenges to any portion of the TFRL or the Atwood Law, I will not be able to address those claims.

I will thus review the constitutional arguments raised by Petitioner to determine their facial or as-applied character before addressing them in the proper context.

A. *Facial Constitutional Claim – Due Process.*

I perceive only one true facial challenge in this case. Petitioner writes that "DOR violates due process in a scheme preventing operation of constitutional guarantees. This fact alone should be sufficient for the AHO to junk the commissioner's arbitrary and capricious activities."[125] Specifically, he asserts that "the constitution's due process guarantees" require a hearing before the Department may revoke his registration.[126]

As explained above, the Atwood Law, at Tenn. Code Ann. § 65-12-210, clearly provides for the suspension or revocation of Petitioner's vehicle registration under exactly the facts demonstrated in this case. It does not provide for a hearing before the suspension or revocation; to the contrary, it directs the Department to "suspend or revokes the motor vehicle owner's registration" when a registrant fails to demonstrate financial security or an acceptable alternative, as Petitioner failed to do here. It makes no mention of a hearing, whether before or after this action.

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[125] Pet. S.J. Motion at 108.

[126] *Id*.

If Petitioner is correct that due process—whether under the United States or Tennessee Constitution[127]—requires a hearing before the Department may suspend or revoke a vehicle registration, then "there are no circumstances under which the statute, as written, may be found valid," and under *Fisher* this is a facial challenge to the constitutionality of Tenn. Code Ann. § 55-12-210. Because it is a facial challenge, I have no authority to address this claim, which must be raised by Petitioner on appeal to Chancery Court if at all.

B. *As-Applied Constitutional Claims.*

1. Claimed Right to Purportedly Private Operation of the Vehicle.

Petitioner claims that "[t]his case is contested in the realm belonging to state privileges" and explains that he is suing for a "right to move down the public road *in commerce*."[128] This passage does not specify the constitution—state or federal—on which Petitioner relies and does not cite a specific constitutional provision that Petitioner believes secures the rights mentioned.

As noted above, Petitioner draws a distinction between "private locomotion in his automobile, which use by law is not implicated by regulation" and "*the privilege of licensed and regular commercial use*" of the Vehicle, which Petitioner believe requires it to be registered as a motor vehicle.[129] He asserts that "[r]egistration lets petitioner use his automobile *as a motor vehicle* in commerce. A registration plate showing privilege tax paid makes an automobile commerce ready, makes it a motor vehicle."[130] Petitioner thus acknowledges that commercial use of the

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[127] Petitioner does not specify which constitutional guarantee he is invoking. The United States Constitution imposes due process requirements on the states through the Fourteenth Amendment. The Tennessee Constitution provides the same protections through Article I, Section 8. *See Heyne v. Metro. Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 734 (Tenn. 2012).

[128] Pet. S.J. Motion at 33 (emphasis in original).

[129] *Id*. (emphasis in original).

[130] Second Motion for Sanctions at 4 (emphasis in original).

Vehicle requires registration, but he also appears to believe that "private locomotion" on public roads in the Vehicle is not privileged. He describes himself in this case as "demanding recognition of nonprivileged use of his automobile, since its status as motor vehicle (privileged) is revoked, and he has right to enjoy use of his private property,"[131] from which I infer he believes he is legally entitled to drive his car, without registration, as long as the use is what he would describe as private or non-commercial. This is the basis on which he sought a "protection letter" from the Department, believing it would give him a

> possible break in pending traffic stop, arrest, citation and/or criminal charge for 'driving on revoked.' Petitioner's defense, if such a harmful police encounter occurs, is that he is not "driving" or "operating" subject to the privilege. He is, instead, merely communicating, self-propelling, traveling, enjoying ingress-egress rights, enjoying free movement, locomoting, etc..[132]

Elsewhere, Petitioner states:

> 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.
>
> …
>
> 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.[133]

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[131] *Id*. at 2.

[132] *Id*.

[133] Pet. S.J. Reply at 9, 11.

Petitioner appears to be identifying two separate harms in his papers: (1) depriving him of registration to which he believes he is lawfully entitled, and (2) depriving him of a liberty interest in driving the Vehicle in a non-commercial capacity. The first of these claims is simply the statutory claim already addressed above. Petitioner acknowledges that his use of the Vehicle is, at least in part, in a commercial capacity, and he believes he is entitled to registration based on his view of the governing statutes, a view I have declined to adopt. The second is a claim, apparently rooted in either the United States or Tennessee Constitutions, for which I cannot provide relief.

Tennessee law clearly establishes "[a]s a condition precedent to the operation of any motor vehicle upon the streets or highways of this state, [that] the motor vehicle shall be registered as provided in this chapter." Tenn. Code Ann. § 55-4-101(a)(1). There is no distinction in the governing statutes between an "automobile" that can be operated for private use without registration and a "motor vehicle" subject to registration. A "motor vehicle," in the TFRL, is defined as any "self-propelled vehicle that is designed for use upon the highway," see Tenn. Code Ann. §55-12-102(7), a definition broad enough to encompass the term "automobile." Petitioner's Honda Odyssey minivan, like any other "self-propelled vehicle that is designed for use upon the highway" must be registered as a condition of being allowed to operate on the streets and highways of Tennessee.

To the extent Petitioner believes this legal regime infringes on a constitutionally protected liberty interest that would allow him to drive the Vehicle for what he considers purely private purposes, this is in direct conflict with Tenn. Code Ann. § 55-4-101(a)(1). Such a claim would appear to be an as-applied challenge because not every vehicle will necessarily have non-commercial uses that would abridge the liberty interest that Petitioner asserts.

But while it is an as-applied challenge, it is a challenge to statutes that the Department of Revenue does not enforce and has not applied against Petitioner. What the Department has enforced against Petitioner is Tenn. Code Ann. § 55-12-210—and through it, Tenn. Code Ann. § 55-12-139(a). While this action may have made it unlawful for Petitioner to drive the Vehicle, the Department has not imposed any sanction on him for doing so, and Petitioner has not alleged that it has.

Under Tenn. Code Ann. § 55-4-101(a)(1), Petitioner may not operate the Vehicle—privately or commercially—on Tennessee roads and highways. And Tenn. Code Ann. § 55-3-102(a)(1)(A) makes it a Class C Misdemeanor to "[d]rive or move or for any owner knowingly to permit to be driven or moved on any highway any vehicle of a type required to be registered under chapters 1-6 of this title that is not registered." Petitioner has not alleged that the Department has enforced these statutes against him, even if the suspension of his registration created the circumstances under which operation of the Vehicle fell within the scope of those statutes. Instead, the only factual allegation by Petitioner regarding the enforcement against him of Sections 55-4-101 and 55-3-102 is that he was arrested by officers of the Hamilton County Sheriff's Department.[134] The Department of Revenue does not control or direct the conduct of that agency or its officers, by statute or otherwise.

Because the Department is not legally responsible for enforcing Tenn. Code Ann. §§ 55-4-101 and 55-3-102, the Commissioner is not "claim[ing] authority beyond constitutional grant" by enforcing those statutes, and the Commissioner is not "criminalizing nonprivileged use" of the Vehicle. The Commissioner suspended the registration by following the dictates of Tenn. Code

[134] *See* Pet. S.J. Motion at 56. I designate this a "factual allegation" because Petitioner has not made the actions referenced a part of this administrative record.

Ann. § 55-12-210, as explained above, and the Commissioner is not responsible for Petitioner choosing to operate the Vehicle despite the suspended registration and thus exposing himself to potential arrest and sanction for his violating Tenn. Code Ann. §§ 55-4-101 and 55-3-102.

Because, as explained above, the only relief I can provide is a restoration of Petitioner's vehicle registration, I have no authority to prohibit any agency of the State of Tennessee or any of its subdivisions from enforcing Tenn. Code Ann. §§ 55-4-101(a)(1) and 55-3-102 against Petitioner. For this reason, I cannot address Petitioner's argument regarding any interference with his claimed liberty interest in privately operating the Vehicle, rooted in *Phillips v. Lewis* or otherwise. This proceeding is not the proper vehicle for that challenge.

Nevertheless, I feel obliged to express some concern for Petitioner's report that he was arrested for traffic offenses in November 2023 and that the criminal charges were dismissed because "UAPA remedies must be exhausted before movant State of Tennessee prosecutes a damaged tailgate criminally."[135] The pendency of this matter in no way insulates Petitioner from criminal charges of any kind or requires delay in their prosecution, and no part of this or any other action taken by me as Administrative Judge or by the Department of Revenue in convening this case should be construed to have that effect. In fact, I expressly denied Petitioner's motion to enjoin the suspension of his registration during the pendency of this case. Nor does the protection letter have any legal effect other than to advise its reader that this case exists. Because the case does not stay the suspension, neither does the letter.

[135] *Id*.

2. *Claim for Violation of Ingress-Egress Rights.*

In addition to seeking the restoration of his vehicle registration, "Petitioner brings this case … to defend private rights of ingress and egress from his abode."[136] He expounded on the nature of these ingress-egress rights in an earlier filing, asserting that "[l]andowners abutting a public highway have a right of ingress and egress to the highway where the condemning authority does not designate the highway as a limited or controlled access highway at the time of acquisition."[137] Petitioner characterizes the deprivation of ingress-egress rights as a taking of property, implicating Article I, § 21 of the Tennessee Constitution.[138] Petitioner also describes these rights as being grounded in "[c]onstitutional limits on department authority [that] are sacrosanct."[139]

Taking Petitioner's conception of ingress-egress rights at face value, these rights are possessed by landowners. Because it is conceivable that a person may own a motor vehicle but not be a landowner, the Department applying Tenn. Code Ann. § 55-12-210 (and the TFRL and Atwood Law generally) to deprive Petitioner of what he characterizes as ingress-egress rights would be an as-applied challenge to the constitutionality of the suspension of Petitioner's vehicle registration.

But I find no constitutional violation here. As explained in my Order Denying Injunction:

> I perceive nothing in the authorities cited by Petitioner suggesting that this right is anything other than an easement—a property right attaching to land abutting a public road—allowing owners of such land to access the roads abutting it.[140] Otherwise, a landowner's

[136] *Id*. at 47.

[137] "Reply defending motion for temporary injunction" at Exh. 5, p. 1 (citing *Pack v. Belcher*, 458 S.W.2d 18, 23 (Tenn. Ct. App. 1969).

[138] *Id*. at 5 (citing *Illinois Cent. R. Co. v. Moriarty*, 446 S.W. 1053, 1054 (Tenn. 1916).

[139] Pet. S.J. Reply at 2.

[140] *See, e.g., Coyne v. City of Memphis*, 102 S.W. 355, 361 (Tenn. 1907) (referring to "the impairment of plaintiff's easement of access to his lot—his right of ingress and egress to and from Iowa avenue and Texas avenue").

> "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*, 102 S.W. 355, 359 (Tenn. 1907) (citation omitted). Petitioner's cases concern government's obligation to permit private property owners to have physical access to public highways on which their property abuts.
>
> None of Petitioner's authorities extrapolate from this property right a further right to ingress and egress onto the public roads specifically in an automobile, much less a fundamental right to do so that defeats the State's power to condition the operation of motor vehicles on compliance with registration laws. "The 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." *State v. Booher*, 978 S.W.2d 953, 956 (Tenn. Crim. App. 1997) (citations omitted). As I construe the Financial Responsibility Laws, Petitioner has failed to comply with the "statutory licensing procedures" necessary to maintain a valid vehicle registration. Prohibiting him from operating his vehicle on public roads in defiance of those requirements does not work a "taking" of his right to ingress and egress his property. He may leave his property and return at any time. He may not lawfully do so while operating a motor vehicle that is not properly registered.[141]

I do not perceive any constitutional right to ingress or egress from property that is abridged by the Department's suspension of Petitioner's vehicle registration.

3. *Constitutionality of the EIVS Program.*

Petitioner insists that "[i]f operation of the electronic insurance verification system ("EIVS") is unconstitutional, it is [the Administrative Judge's] duty to shut it down."[142] This suggests that Petitioner believes the EIVS Program is unconstitutional, but Petitioner offers no specific basis for that claim throughout any of his summary judgment papers.

It is clear that Petitioner is not claiming that the EIVS Program—or more precisely, the Atwood Law, the statute under which the EIVS Program is authorized and developed—is facially

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[141] Order Denying Injunction at 16.

[142] Pet. S.J. Reply at 6.

unconstitutional. Throughout his papers, he acknowledges that the EIVS Program has a valid, legal role to play in administering the requirements of the Atwood Law,[143] and asserts that the Department's "EIVS operation is arbitrary and capricious, a violation of Atwood in the name of the Tennessee financial responsibility law of 1977."[144] These statements clearly indicate that that Petitioner believes the problem with the EIVS Program is how the Department administers the Atwood Law rather than its mere existence.

I must therefore conclude that any constitutional claim Petitioner is making about the EIVS Program and the Atwood Law is an as-applied challenge to the constitutionality of the Department's implementation of the Atwood Law. But Petitioner has not articulated any argument for how the Department's application of the Atwood Law or its use of the EIVS Program against him violate any specific constitutional provisions. The mere invocation of the phrase "arbitrary and capricious," quoted above, does not rise to the level of a constitutional argument providing notice to the Administrative Judge and to the Department of the nature of his arguments.

Instead, Petitioner seems primarily focused on how, in his view, the Commissioner has misconstrued the Atwood Law in establishing and operating the EIVS Program. Even if I agreed with those arguments, and I do not, an incorrect construction of the law by a government official does not inherently rise to the level of a constitutional violation.

I cannot extrapolate a constitutional claim from oblique references. Because Petitioner has not articulated any basis for his claim that the EIVS Program is being operated in an

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[143] *See, e.g.*, Pet. S.J. Motion at 122 (referring to a set of registrants who are "target[s] of EIVS legal surveillance"), 129 (referring to the statute giving "EIVS a fly swatter load of work"), and 136 (calling for a conclusion of law that "EIVS apply not to noncustomers of the insurance industry, but only to motor vehicle policy holders" rather than that the program should be abolished entirely).

[144] *See id*. at 59.

unconstitutional manner, I conclude that his objections are entirely a matter of statutory construction, and I have already addressed that claim above.

4. *Petitioner as a Member of the Press.*

In his motion for a temporary injunction, Petitioner asserted "[d]enial of the use of petitioner's car infringes on his property rights in his occupation as press member."[145] In declining to find a likelihood of success on the merits of this claim, I noted that Petitioner had not explained how he uses the Vehicle in furtherance of the exercise of this right and that "[i]t is not enough to assert the existence of a constitutional right and insist that the Vehicle is used in furtherance of its exercise."[146]

In his motion, Petitioner now offers a court order that refers to Petitioner as "a local member of the press"[147] and also claims the denial of "free speech and communication rights" under Art. I, § 19 of the Tennessee Constitution in addition to denial of his rights as a member of the press.[148] Even if the order of the Hamilton County Criminal Court sufficed to factually establish Petitioner's status as a member of the press, the infirmities in the claim previously identified remain. Petitioner makes no effort to explain how the denial of the use of the Vehicle burdens his exercise of a constitutionally protected right—either of speech or as a member of the press—much less creates a burden that rises to the level of a constitutional violation. He offers only conclusory statements without any case authority that would suggest that a member of the press, by dint of that status, is essentially exempt from the State's authority to use its police power to regulate the

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[145] Pet. Motion for Injunction at 7.

[146] Order Denying Injunction at 22.

[147] Pet. S.J. Motion at Exh. 3, an order from the Criminal Court of Hamilton County.

[148] Pet. S.J. Motion at 161.

exercise of the "revocable 'privilege'" of driving motor vehicles on state highways. *Booher*, 978 S.W.2d at 956.

Petitioner has given me no reason to suspect that requiring the entities and persons comprising the press to register their motor vehicles is an unconstitutional burden on their exercise of rights as members of the press, which would be an extraordinary conclusion of law given that, presumably, *most* members of the press in Tennessee use motor vehicles for work-related travel. Nor has Petitioner explained, in the alternative, why his work as a journalist is unique among his field in a manner that makes the burden on him, in particular, unconstitutional. And these issues are even more acute when applied to the protection of free speech, a right reserved to all citizens of the State regardless of their occupation.

In short, "[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." *Booher*, 978 S.W.2d at 956 (citations omitted). Petitioner has not offered any legal authority for the proposition that his status as a member of the press creates a constitutional exception to this statement—unique to him or otherwise—and has not provided any articulation of facts that might support that premise. He has, essentially, failed to make an argument for this claim.

IV. RULING ON THE CROSS-MOTIONS.

A. *The Department's Motion for Summary Judgment.*

I have concluded, as a matter of law, that the owner of every motor vehicle required to be registered with the State of Tennessee must demonstrate financial responsibility under the TFRL in order to operate the Vehicle on Tennessee highways. And I have concluded that the Atwood Law, and Tenn. Code Ann. § 55-12-210 in particular, authorize and direct the Department to use

the EIVS Program to identify uninsured vehicles and to suspend or revoke the registration of those vehicles when registrants fail to provide either proof of financial security or a reason they are not required to comply with the financial responsibility requirements for those vehicles. Thus, as a matter of law, the Department of Revenue is authorized and directed to suspend (or revoke) a motor vehicle registration after it discovers a vehicle is uninsured and the registrant fails to provide a satisfactory response as described in Tenn. Code Ann. § 55-12-210.

The undisputed facts established in this case demonstrate exactly this. It is undisputed that the EIVS Program identified the Vehicle as uninsured—which it was—and that the Department sent a series of notices to its owner, Petitioner, requesting that he demonstrate financial security or document that he was not required to do so for one of the reasons stated in Tenn. Code Ann. § 55-12-210(a)(1). It is also disputed that these notices document that, throughout this process, the Department never received confirmation from Petitioner of insurance coverage or his entitlement to an exemption.

Because Petitioner never responded to the Department's notices with a justification for his failure to carry insurance coverage on the Vehicle that would satisfy Tenn. Code Ann. § 55-12-210, I conclude as a matter of law that the Department's decision to suspend his vehicle registration was authorized by and consistent with Tenn. Code Ann. § 55-12-210. And I find that the Department has established that all of the material facts necessary to support this conclusion are undisputed.[149]

In making this ruling, I presume that Petitioner has not been involved in an accident in the Vehicle. He has said as much in an affidavit[150] and, relying on that affidavit, submitted as a

[149] *See* Findings of Fact, *supra*.

[150] Petitioner's "affidavit of no crash," ¶ 5, attached as Exh. 4 to his "Reply defending motion for temporary injunction" (Dec. 13, 2023).

statement of undisputed material fact that he "has not had a qualifying accident pursuant to T.C.A. § 55-12-104.[151] Based on the nature of the Department's response, I am unable to take Petitioner's claim as a true findings of fact.[152] But I presume it is true for purposes of ruling on the Department's motion for summary judgment because, "[w]hen assessing the evidence in considering summary judgment, the evidence 'must be viewed in a light most favorable to the claims of the nonmoving party, with all reasonable inferences drawn in favor of those claims,'" *Relliford v. Burks*, 2025 WL 26106, *6 (Tenn. Ct. App. 2025) (citing *Cotten v. Wilson*, 675 S.W.3d 626, 637 (Tenn. 2019), and consistent with *CAO Holdings*,[153] I evaluate the Department's motion separately from Petitioner's. Petitioner is thus in the position of the non-moving party here.

I make this presumption that Petitioner was not involved in any accident that would trigger compliance obligations under the TFRL (independent of the Atwood Law) because it is the light most favorable to Petitioner's claims and because, as a matter of law, I conclude that it is irrelevant. For the reasons explained above, no such accident is a necessary predicate to the financial responsibility obligation.[154]

Further, for the reasons given above, Petitioner has not articulated any colorable claim that the suspension of his vehicle registration violated either the United States or Tennessee Constitutions.

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[151] Pet. S.M.F. at No. 2.

[152] Because Petitioner incorporated a statutory reference, the Department contended that the statement was not compliant with Tenn. R. Civ. P. 56.03 because it presented a legal conclusion and allowed only that "that, "[t]o the extent a response is deemed required, Respondent agrees that Petitioner was not involved in an accident that prompted the suspension of his motor vehicle registration," which falls short of acknowledging the full statement.

[153] *See supra* at 17.

[154] To be clear, because the fact is not relevant, I do not consider it material and thus its absence as a definitive finding of fact does not bear on my ability to address the Department's motion for summary judgment. I make this aside only to make clear that even if the fact alleged by Petitioner was undisputed and proven, under my reading of the law, that would not alter my disposition of these motions.

I therefore conclude, based on the undisputed facts established in this case, that the Department's suspension of Petitioner's vehicle was authorized by law and that Petitioner has failed to carry the argument that this application of the statute to him violated any constitutional protection. The Department is therefore entitled to summary judgment as a matter of law, and **its motion for summary judgment is granted**.

B. *Petitioner's Motion for Summary Judgment*.

I have concluded that the TFRL requires Petitioner to demonstrate financial responsibility in order to operate the Vehicle and that the Atwood Law authorizes the Department to suspend his registration of the Vehicle if he fails to document some form of compliance under Tenn. Code Ann. § 55-12-210(a)(1). I therefore conclude, as a matter of law, that Tennessee is not an after-accident state with respect to financial responsibility and that, because he failed to maintain an acceptable form of proof of financial responsibility or establish an exemption, the Department properly and lawfully suspended Petitioner's vehicle registration under the Atwood Law. I have also concluded that Petitioner has raised no colorable constitutional objection to this action.

And because the lawfulness of the suspension is the only issue properly before me under Tenn. Code Ann. § 67-1-105, I must therefore **deny Petitioner's motion for summary judgment**.

COMMENT ON THE LENGTH OF THIS PROCEEDING

Petitioner has observed, on two occasions, the length of time this contested case has been pending. In his response to the Department's motion for summary judgment, he noted the case had been pending for 461 days.[155] In an email to my legal assistant on January 24, 2025, he calculated it as 548 days.

[155] Petitioner's Sum. Judg. Resp. at 23.

I wish to address these concerns. I have endeavored to grant Petitioner his full rights under the UAPA to bring and prosecute this contested case so that he could create the record he believed was necessary to prevail on his case, either before me or, if necessary, on appeal. Early in the case, I surmised that the only question properly presented by the petition was whether the Department lawfully suspended Petitioner's vehicle registration given his lack of insurance coverage (or lawful alternative) and the lack of evidence of what Petitioner terms a "qualifying accident."[156] This is a simple question of law capable of adjudication based on a handful of facts that could be established by information possessed by the parties at the outset of the case. In my view, this case could have been presented for a ruling on summary judgment almost immediately with little to no discovery (especially if the parties agreed to stipulate to uncontested facts such as the lack of an accident) and could have been adjudicated within a matter of weeks.

This did not happen because Petitioner pursued various procedural motions and extensive discovery. For example, Petitioner moved for my recusal and questioned his own invocation of the Department's jurisdiction, both of which substantially delayed the completion of the statutorily mandated pre-hearing conference. And Petitioner chose to pursue discovery that went beyond what was strictly necessary to present the statutory question at the heart of this case. Wishing to avoid any premature conclusions about relevance and to ensure that this administrative record was sufficient for both parties to assert their rights and arguments both before me and on any appeal, I

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[156] *See, e.g.,* Order Denying Temporary Injunction at 6:

> My authority to hear this matter is limited to ruling on the propriety—as a matter of law and fact—of the Department suspending Petitioner's registration of the Vehicle. My appointment as administrative judge and the Department's authority to convene a contested derive from Tenn. Code Ann. § 67-1-105, which applies to any "adverse action" the Department takes to "implement any … registration law administered by the commissioner" of revenue. The statute provides jurisdiction to address only specific actions of the Department taken against the specific interest of a particular individual. As a result, the merits of Petitioner's contested case will turn on whether the facts and law supported the Department's suspension of his registration of the Vehicle under the relevant statutory authority.

gave Petitioner wide latitude to pursue discovery. I also gave him great deference in refining his discovery requests, allowing him to amend, revise, and refine those requests until they comported with the Rules of Civil Procedure. This took a considerable amount of time and litigation, as recounted above. Petitioner specifically acknowledged that he had "difficulty determining what sort of deposition questions are considered factual evidence obtainable in deposition under the rules," that "his failings [were] due to inexperience that he ask[ed] be not held against him."[157] The delays associated with discovery, in particular, were the result of the latitude I granted Petitioner in response to this request.

Further delay was entailed in allowing Petitioner latitude to determine his course of action after the Department filed its motion for summary judgment on July 15, 2024. He initially planned to oppose that motion without filing his own and requested time to obtain a transcript of his Rule 30.02(6) deposition of the Department (conducted July 9).[158] That request was granted, with the timing left to Petitioner.[159] Later, Petitioner changed his mind and decided to file his own motion for summary judgment,[160] resulting in the provision for additional briefing to accommodate the cross-motions.

In recounting these events, it is not my intention to litigate my management of this contested case. Rather, I wish only to reassure Petitioner that the time taken to resolve this case was attributable to resolving the various motions he filed and otherwise was, in large part, because he was given latitude to pursue the discovery he believed he needed for his case, because he was

[157] "Response to motion for protective order," Mar. 20, 2024, at 1.

[158] "Order Setting Status Conference for August 22, 2024," entered July 24, 2024, at ¶ 3.

[159] *Id*. at ¶ 5 ("Petitioner will obtain the transcript when he is able").

[160] "Order Setting Schedule for Summary Judgment" at ¶ 3.

given the opportunity to refine his discovery requests when the Department sought protection from non-compliant requests, and because he was given the opportunity to obtain the transcript of his deposition before being required to respond to the Department's motion for summary judgment or to decide to file his own.

In short, with the exception of time requested by the Department to delay the Rule 30.02(6) deposition to accommodate its counsel's leave—a request that was not formally challenged by Petitioner with a motion seeking to compel earlier compliance—this case has been litigated at a pace dictated by Petitioner's preferences and needs.

CONCLUSION

For the reasons given above, I **GRANT** the Department's motion for summary judgment and **DENY** Petitioner's motion for summary judgment.

Therefore, it is hereby **ORDERED** that:

1. Summary judgment on the merits of this contested case is entered in favor of the respondent, the Department of Revenue.
2. Petitioner's motion for summary judgment is denied;
3. The petition is dismissed with prejudice;
4. This order shall take effect upon becoming a final order as provided by law; and
5. Appeal of this order is authorized as provided in Tenn. Code Ann. § 4-5-315.

Entered and effective this 14th day of February 2025.

Brad H. Buchanan
Administrative Judge

CERTIFICATE OF SERVICE

I certify that I have this date served a true and correct copy of the foregoing "Initial Order Granting Department's Motion for Summary Judgment and Dismissing Petition" upon the interested parties at the addresses listed below, via electronic mail to:

David Jonathan Tulis
davidtuliseditor@gmail.com
Petitioner *pro se*

Camille Cline
Associate General Counsel
Tennessee Dept. of Revenue
camille.cline@tn.gov

on this 14th day of February 2025.

/KH/
Karyn Hill
Legal Assistant, Hearing Office
Karyn.hill@tn.gov

APPENDIX TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

The Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) Either party files a petition for appeal to the agency, or the agency on its own motion gives written notice of its intention to review the Initial Order within fifteen (15) days after the entry date of the Initial Order. If either of these actions occur, there is no Final Order until the Initial Order is reviewed by the agency and a new Final Order is entered or the Initial Order is adopted and entered, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Hearing Office, Tennessee Department of Revenue, 11th Floor, Andrew Jackson State Office Building, Nashville, Tennessee 37242 (Telephone No. 615-741-3810). *See* Tenn. Code Ann. § 4-5-315 (addressing review of initial orders by the agency).

Or

(2) A party files a petition for reconsideration of the Initial Order within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Hearing Office at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration or from the 20th day after the filing of the petition if no order is issued. *See* Tenn. Code Ann. § 4-5-317 (addressing petitions for reconsideration).

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. *See* Tenn. Code Ann. § 4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order or within fifteen (15) days after the entry date of a Final Order by the agency, a party may petition the agency for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. *See* Tenn. Code Ann. § 4-5-317.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. *See* Tenn. Code Ann. § 4-5-316.

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute, within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty-day period if the petition is not granted.)

The reviewing court may order a stay of the Final Order upon appropriate terms. *See* Tenn. Code Ann. §§ 4-5-322 and 4-5-317.