United States district court — eastern district for Tennessee, civil division

David Jonathan Tulis % 10520 Brickhill Lane Soddy-Daisy, TN 37379 davidtuliseditor@gmail.com (423) 316-2680	*Plaintiff*	**JUDGE TRAVIS McDONOUGH** **Magistrate Judge Dumitru** Case No. 1:24-cv-368
v. Brandon Bennett in his personal capacity; Sheriff Austin Garrett in his personal and official capacity; Hamilton County, Tenn., Government	No in	**Jury trial demand**
	Defendants	

Response to motion to dismiss as to Bennett, Garrett

> *A regulated monopoly in the motor carrier field is not authorized by Chapter 119, Public Acts 1933.* **The highways of the State belong to the people of the State.** *Many of these highways have been improved at large cost to the taxpayers. It is the convenience and necessity of the people of the State that must be given predominant consideration by the Commission, and not that of contending motor carriers operating free over these highways.*
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> — *Dunlap v. Dixie Greyhound Lines, 178 Tenn. 532, 160 S.W.2d 413, 418 (1942) (emphasis added)*

The complaint defends the law of privilege in Tennessee Const. art. 2 § 28 and federal rights guarantees implied under it of the liberty of occupation and the freedom to enjoy numerous federal rights starting with those shielded by U.S. Const. Amend. I, among them, travel and communication. Complaint also seeks to have upheld a wickedly disobeyed state law, T.C.A. § 40-7-103, that guarantees freedom from attainder and from general warrants ("on-sight arrest" or "Redcoat warrants") with protections more powerful than those secured under U.S. Const. Amend. IV. Defendants ask the court to secure customs destroying enjoyment of these provisions.

The suit is premised on federally protected rights under U.S. Const. Amend. I, the right to assemble, worship and speak freely, and under Tenn. Const. Art. 2 § 28 creating privilege, under which motor vehicles operate at Titles § 55 and 65. The complaint shows that the privilege taxable activity of driving or operating a motor vehicle is, indeed, a privilege.

I. Introduction

The complaint is sufficient to bring the case to consideration for injunctive relief the jury, with defendants' motions to dismiss in bad faith mischaracterizing (1) the law of warrantless arrest and (2) the law of "traffic stops." Plaintiff's two administrative notices served on defendants, **EXHIBIT Nos. 1 and 2,** detail the laws governing warrantless arrest and transportation privilege. They exercise conservator of the peace operation authority pursuant to T.C.A. § 8-8-213. Defendants acquiesced to these notices by silence. Plaintiff relied on this response to the law's claims as to warrantless arrest and as to privilege in operating a motor vehicle. On the day of his arrest, plaintiff lives out his good-faith belief that defendants use arrest warrants when they ought, and know and understand that driving or operating a motor vehicle is a privilege in state of Tennessee.

This case defends the concept that driving is a taxable *privilege* under Tenn. Const. Art. II § 28, which concept defendants deny. State and federal law about privilege is in the English language. It's public. Notice was duly served. Defendants have actual or putative knowledge of the statutes, constitutional provisions and court rulings notice provides. As defendants were put on inquiry notice, were informed and on awares, they cannot now say "I didn't know" and "I didn't intend" and ask to be held guiltless.

Instant cause is distinguished from other 42 U.S.C. § 1983 cases for the groundwork plaintiff has done to establish the law on § 40-7-103 and § Title 55 and broaden the circle of awareness and personal knowledge surrounding a "traffic stop" to include notice.

Defendants do not have "reasonable suspicion" of a criminal act sufficient to generate "probable cause" of a criminal act being committed by plaintiff. Given notice, they knew privilege law is administered by a state administrative agency. They knew state of Tennessee has duty to exhaust administrative remedies prior to adjudication. They knew as a matter of law privilege law is administrative, regulating commerce, transportation, business or industry, and that privilege law does not empower them to criminalize privilege taxable activity controversies — say, the technical defect of a damaged taillight bound to be disputed in agency in a contested

case. They know department of safety ("safety" or "DOSHS") oversees driver licenses in chapter 50 of Title 55 and chapter 15 of Title 65. They know "[t]he registration and the fees provided for registration shall constitute a privilege tax upon the operation of motor vehicles" T.C.A. § 55-4-101. They know that right of free movement pre-exists commercial regulation and is not derogated or abrogated by regulation of commerce flowing from Tenn. Const. Art 2 § 28, privileges, which constitution contains in Article 1 a hallowed bill of rights. They know they cannot construe any law or regulation in a way as to make it unconstitutional.

Plaintiff served Tennessee transportation administrative notice March 1, 2018 (Doc. 1, PageID # 60). The affidavit attached to the notice in the exhibit indicates he served Sheriff Jim Hammond personally, in presence of spokesman Matt Lea and one other witness. Plaintiff served administrative notice regarding arrest by officer without warrant April 15, 2020, on the county commission (Doc. 1, PageID # 52). This service was via e-mail, with a response e-mail from the administrator that she sent each commission member a copy of plaintiff's letter with the notice attached. The fact of proper service of these legal briefs constitutes "objective factors" and the "totality of circumstances" showing defendants to be informed with well established knowledge Nov. 22, 2023, of plaintiff's rights and defendants' authority limits.

The complaint establishes the claims of T.C.A. § 40-7-103 upon defendants. The complaint establishes law regarding administration of traffic offenses, that alleged misuse of privilege or wrongs by privilege parties are heard under UAPA at T.C.A. § 4-5-101 *et seq* and not under criminal penal enforcement.

Dismissing the case would harm the public, would let defendants continue to obliterate "privilege" in Tenn. Const. Art 2 § 28 as described in case law starting in the 1850s. Dismissal would pretend the Tennessee constitution has been amended to eliminate privilege as an exercise of police or tax power. Denial of plaintiff's right to trial would pretend the Tennessee general assembly enacted a law to broaden the motor vehicle code to include *private use or noncommercial use*, private ingress-egress and all private communication of those persons or individuals using roads thrown open to the public. (Such bill has not been made law, to plaintiff's knowledge; discovery might prove otherwise.)

The complaint sufficiently alleges defendants exercise conservator of the peace powers at T.C.A. § 8-8-213, which pertain to suppressing criminal acts, riots, affrays, disturnbamces upon parties involved, or presumptively involved, in the state privilege of driving and operating motor

vehicles. It sufficiently alleges defendants criminalize alleged breaches designed to be redressed administratively, either by notice to a violator or by a contested case in the department of safety under UAPA, all matters pertaining to controversies under a license, from issuance to revocation, being administrative matters.

The traffic violation claim raised by defendants is subject to the uniform administrative procedures act ("UAPA") at T.C.A. § 4-5-101 *et seq*. Controversies over licenses are administrative in nature ("[T]he grant or refusal of a license to use public highways in commerce is purely an administrative question." McMinnville Freight Line, Inc. v. Atkins, 514 S.W.2d 725, 726–27 (Tenn. 1974)). [1] Also sufficiently alleged is the harm under controlling law, false imprisonment and false arrest done by defendant Bennett's person without warrant in defiance of T.C.A. § 40-7-103, detailed to him putatively or constructively by administrative notice April 15, 2020. "Under both the United States and Tennessee Constitutions, a search or seizure conducted without a warrant is presumed unreasonable. State v. Smith, 21 S.W.3d 251, 254 (Tenn. Crim. App. 1999)

By starting with privilege in the constitution and the cases such as Phillips v. Lewis, 3 Tenn. Cas. 230, that define privilege (Appendix, Doc. 1, PageID # 39), and by insisting on the jurisprudence on "public offense," the complaint upholds and relies on two laws, privilege and public offense. It empowers the court to secure the federal right of Tennesseans to live under a republican form of government. U.S. Const. Art. IV § 4.

Plaintiff has a right to be heard as to the scope of state government's commercial regulatory authority and if its law is being poached by defendants whose authority is not administrative of executive branch authority, but criminal in conservatorship of the public peace.

Defendants ask the court to pretermit the first half of the entirety of the circumstances in this case, starting by excluding detailed administrative notices putting defendants on awares about state and federal law. "Plaintiff's legal conclusions are simply not buttressed by a plain

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[1] All matters pertaining to driver licenses and licensed activity are purely administrative, however, and must comply with the rule of exhaustion of administrative remedies. "[T]he Utilities Commission has never been held by this Court to be restricted by the technical common law rules of evidence in determining purely administrative questions, and we have held that the grant or refusal of a license to use public highways in commerce is **purely an administrative question**." *Hoover Motor Exp. Co. v. R.R. & Pub. Utilities Comm'n*, 195 Tenn. 593, 616, 261 S.W.2d 233, 243 (1953).(emphasis added)

reading of the statutes at issue" (Doc.15, PageID # 168). "There was, then, no constitutional right, much less a clearly established right, of the Plaintiff's that was violated by the Sheriff in having his deputies uphold Tennessee law."

The totality of circumstances analysis required in this case discerns that defendants knowlede of the law presented by administrative notice establish plaintiff's clearly established rights. "The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely excluded from the category of private or personal rights arising from citizenship. Recent decisions of the Supreme Court of the United States have determined certain fundamental principles concerning the use of the highways. One is "that the primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right." *Hoover Motor Express Co. v. Fort*, 167 Tenn. 628, 72 S.W. (2d) 1052, 1055. The statement and definition of the terms and conditions upon which a privilege, not a matter of common right, may be exercised is, we think, within the declared purpose of regulation and does not amount to prohibition. In such a case the prevention of an unauthorized exercise of the privilege is clearly implied in the statement of the purpose to regulate it." State v. Harris, 168 Tenn. 159, 76 S.W.2d 324, 325 (1934)

Plaintiff's legal objection to the validity of the traffic stop on grounds of it being imposed upon him criminally instead of administratively is proper. Such law distinction is like that between state or federal jurisdiction, and touches on whether the officer has authority and the general sessions court subject matter jurisdiction.

II. Complaint based on privilege law

Defendants say public offense allows privilege regulation

Tennessee has two forms of taxation — *ad valorem* and privilege (occupational regulation). Tenn. Const. Art. 2 § 28 creates the privilege system. "The Legislature shall have power to tax merchants, peddlers, and privileges, in such manner as they may from time to time direct, and the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange." At least 15 court cases describe privilege as the state permission to participate in an activity, calling, or occupation that is designed to create private profit and gain off the public. The complaint includes excerpts from the leading privilege case, Phillips vs. Lewis, 3

Tenn. Cas. 230, 1877, that makes distinction between, on one hand, (1) regulable and taxable activity affecting the public interest, and (2) property and liberty on the other, nontaxable and not in view of tax or police power.

The privilege system explicitly excludes taxing property. Bitches, jackasses, spring water described in state cases are property, and ownership is not taxable. The *sale and use* of these objects makes them subject to tax, regulation and privilege. "We have numerous cases upon the subject. [2] *** There is an apparent conflict between some of the earlier cases and the later ones, but the result of the later cases is that a privilege is **whatever business, pursuit, or avocation, affecting the public**, the Legislature may choose to declare to be a privilege, and to tax as such." Trentham v. Moore, 111 Tenn. 346, 76 S.W. 904, 904–06 (1903) (emphasis added).

Criminal enforcement and administrative regulation are distinct areas of law. The Bennett arrest originates in *pretended administrative regulation*, which is civil. Defendants' criminal authority is invoked only on articulable, reasonable or warranted *suspicion of a crime* under T.C.A. § Title 39 having been committed. State v. Garcia, 123 S.W.3d 335, 343–44 (Tenn. 2003).[3]

Department of safety is venue for administrative allegations

Only a member of the highway patrol can stop a motor vehicle traveling on the road ***without probable cause.*** This authority is found in the law plaintiff is defending. "(c) Unless a law enforcement officer has probable cause to believe that an offense has been committed, *no*

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[2] The case lists these: Mabry v. Tarver, 1 Humph. 94, 98; Cate v. State, 3 Sneed, 121; French v. Baker, 4 Sneed, 195; Robertson v. Heneger, 5 Sneed, 257; Mayor v. Guest, 3 Head, 414; State v. Schlier, 3 Heisk. 283; Jenkins v. Ewin, 8 Heisk. 475; Wiltse v. State, 8 Heisk. 544, 547; Clarke v. Montague, 3 Lea, 274-277; Dun v. Cullen, 13 Lea, 202, 204; Phillips v. Lewis, 3 Tenn. Cas. 230; Pullman v. Gaines, 3 Tenn. Ch. 591; Kurth v. State, 86 Tenn. 134, 136, 5 S. W. 593; Turnpike Cases, 92 Tenn. 369, 372, 22 S. W. 75; R. R. v. Harris, 99 Tenn. 702, 703, 43 S. W. 115, 53 L. R. A. 921.

[3] "We have noted that '[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop **within the meaning of the Fourth Amendment** of the Federal Constitution and Article I, section 7 of the Tennessee Constitution.' *Id.* (citing *State *344 v. Pulley,* 863 S.W.2d 29, 30 (Tenn.1993)). Accordingly, in the instant case, when Officer Kohl stopped Garcia's vehicle **by turning on her blue lights**, she must have had **reasonable suspicion**, supported by **specific and articulable facts**, that the defendant had committed, or was about to commit, **a criminal offense** in order for the stop to be constitutionally valid."

State v. Garcia, 123 S.W.3d 335, 343–44 (Tenn. 2003) (emphasis added)

officer, except members of the Tennessee highway patrol acting pursuant to § 4-7-104, shall have the authority to stop a **motor vehicle** for the sole purpose of examining or checking the license of the driver of the vehicle" (Tenn. Code Ann. § 40-7-103) (emphasis added). The court cases cited as favoring qualified immunity for defendants don't recognize Tennessee law that makes clear that commercial traffic is not subject to criminal protections from troopers, who can stop any commercial user, any party with a tag, and check a driver's license without probable cause. Other officers must have a crime in view in making an arrest and are not authorized to impose administrative sanction and inspection.

A trooper's authority to stop a motor vehicle operator apart from criminal probable cause inheres in a licensee's *pre-agreement* to be stopped as driver or operator of a motor vehicle *under privilege*, that being through his application for a classified ***and*** commercial driver's license under § 55-50-101 *et seq*. [4] Every driver license under chapter 50 is commercial. [5]

Defendants admit 11 times in the Bennett/Garrett motion to dismiss they arrest plaintiff in a "traffic stop." DOSHS troopers administer traffic regulations on traffic, or for-hire transportation. Traffic is under privilege. The word describes privilege activity. No one has a right to use the public right of way for private profit and gain. "It is well established law that the highways of the state are public property; that their primary and *preferred use is for private purposes*; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit." Stephenson v. Binford, 287 U.S. 251, 264, 53 S. Ct. 181, 184, 77 L. Ed. 288 (1932) (emphasis added).

Only licensees under taxable privilege may use the people's public roads for such private profit and gain. [6] Safety's chief *criminal* authority is against odometer fraud in 10 provisions.

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[4] Driver licenses are issued and revoked "upon the principles of equity." *Sullins v. Butler*, 175 Tenn. 468, 135 S.W.2d 930, 933 (1940).

[5] Before revision in 1998, the driver license law was known as the **"Uniform Motor Vehicle Operators' and Chauffer's Licenses Law**." It pertains to for-hire use of the roads then, and now.

[6] "The state legislature may properly enact reasonable regulations requiring licensing and registration of motor vehicles as it furthers the interests of public safety and welfare pursuant to its police power. 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. Ferrell, 2009 Tenn. Crim. App. LEXIS 629

T.C.A. § 4-3-2010. Troopers on patrol "enforce all laws, and all rules and regulations of the department of transportation regulating traffic on and use of those highways" and "[a]ssist the department of revenue ("revenue" or "DOR") and the county clerks of the state in the collection of all taxes and revenue going to the state, and in the enforcement of all laws relating to same." T.C.A. § 4-7-104. Trooper's duty is to "protect the lives and safety of the *traveling public* on state highways" § 4-7-113 (emphasis added). In regulating transportation and for-hire use of the roads, safety "has the power to exercise all duties, responsibilities and powers granted the department in title 65, chapter 15, to establish and promulgate rules and regulations necessary for the administration and enforcement of title 65, chapter 15" T.C.A. § 4-3-2012. Criminal enforcement authority is limited. (1) "unlawful taking of a motor vehicle" § 4-7-114 (2) fraud in registration applications, title 55, chapter 5 and (3) theft of property, T.C.A. § 39-14-103. "The commissioner of safety *** is hereby authorized to appoint or designate hearing officers to conduct contested case hearings under the Uniform Administrative Procedures Act, compiled in

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"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse-drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business." Thompson v. Smith, 154 SE 579, 11 *American Jurisprudence*, Constitutional Law, section 329, page 1135

Origins of motor vehicle regulation show it arose from municipal commercial regulation.

> 3079a199. **Operator** is a common **carrier**, and the business is a **privilege**, when.–Any person, firm, or corporation operating **for hire** any public conveyance propelled by steam, compressed air, gasoline, naphtha, electricity, or other motive power **for the purpose** of affording a means of street **transportation** similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the way and course of operation, shall be and the same is hereby declared and defined to be a **common carrier**, and the business of all such common carriers is hereby declared to be a **privilege**.

(1915, ch. 60, sec 1.), cited in Shannon's *A Compilation of Tennessee Statutes*, Volume 2, 1917. (emphasis added)

T.C.A § 65-15-102(7) "'**For-hire motor carrier**' means a person engaged in the **transportation** of goods or passengers **for compensation**." (emphasis added)

chapter 5 of this title" T.C.A. § 4-3-2005. DOSHS develops rules that "promote the efficient and effective use of motor vehicles in law enforcement activities." T.C.A. § 4-3-2007.

Defendants knew or should have known by notice traffic is federally regulated under the U.S. department of transportation to create the unified carrier registration system. T.C.A. § 65-12-101. "The power of the federal government to regulate interstate commerce gives it control over motor vehicles engaged in business between one state and another of the same degree as such control exists as to any other class of vehicles engaged in the same occupation." 7A *Am Jur* 2d, Automobiles and highway traffic. (Doc. 1, PageID # 66, 67)

Defendants knew or should have known by notice that a contested case "means a proceeding *** in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing" with such hearing able to address "suspensions of, revocations of, and refusals to renew licenses." T.C.A. § 4-5-102.

That DOSHS is the proper place to hear a disputed use of the driving privilege is admitted by defendants. Following service March 1, 2018, they acquiesced to administrative notice. In good faith plaintiff relied on their acceptance of the law as presented therein.

Going further, administrative notice to defendants shows they maliciously seized plaintiff, knowingly and intentionally and in bad faith oppressing and injuring him in his federally guaranteed rights. "As a matter of public policy, qualified immunity provides ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 335, 106 S. Ct. 1092, 1093, 89 L. Ed. 2d 271 (1986).

Mr. Bennett made no allegation of wicked intent concurring with the alleged criminal act of a damaged taillight. Plaintiff, as a matter of law under notice, knew he was committing no crime traveling privately, and in good faith used the public road for private purposes not in privilege. In entrapment by estoppel, he was seized and arrested as a criminal and injured.

Free movement for press rights as exercised by plaintiff Nov. 22, 2023, is a secured right. Other such rights are for that of communication, for assembly, going to the post office as per Crandall v. Nevada, 73 U.S. 35 (1867), the pursuit of private occupations and vocations and pleasures, using the roads for family purposes, the exercise and enjoyment of rights, and many other rights not necessarily enumerated in the constitution, protected by U.S. Const. Amend. IX,

in view in all those areas of life that are not "business, pursuit, or avocation, affecting the public."

Defendants' argument for dismissal ignores the vital distinction between privilege and not privilege, between taxable and non-taxable, between public and private. It intends to create the sense in the reader's mind that everything and everyone is subject to the state, including this press reporter traveling toward federal jurisdiction of his radio studio protected by the first amendment and also by Tenn. Const. Art. 1 § 19, "That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof."

Plaintiff is subject, and better he not think otherwise, defendants suggest. He's in no way able to move, breathe or live apart from its claims going from news assignment to assignment and enjoying fulfillment of family necessities by stopping by the Hixson Aldi for groceries on his travels home. Defendants would nullify enjoyment of the promise that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," U.S. Const. Amend. I. The presumption of defendants' pleadings is "Nothing is excepted out of the power of the state."

Such premise and practice is prohibited by the federal bill of rights, U.S. Const. Amend. I in particula, and the striking warning in Tenn. Const. Art 11 § 16 that forbids defendants' equivocations: "The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and **shall never be violated on any pretense whatever**. And to guard against transgression of the high powers we have delegated, we declare that **every thing in the bill of rights contained**, is **excepted out of the General powers** of government, and shall **forever remain inviolate**" (emphasis added).

Defendants' have everything backward, and in turning rights and privilege on their head, run a regime of harassment, violence and abuse against plaintiff and the rest of the beleaguered people in Hamilton County.

III. Qualified immunity, entrapment by estoppel

The jurisprudence of qualified immunity is important in protecting state actors performing state functions. Qualified immunity claims in a motion to dismiss fail if defendants'

conduct violates a clearly established right in other cases that a reasonable officer confronted with the same or similar situation would have known that his conduct violated that right.

In instant case the role of administrative notice plays a role making the complaint unique among 42 U.S.C. § 1983 lawsuits. Defendants are under administrative notice about well-known law in Tenn. Const. art . 1 § 7 on arrest warrants (Doc.1, PageID # 18). That and the exceptions law to this provision at T.C.A. § 40-7-103. Plaintiff exercises of his right to give administrative notice under U.S. Const. Amend. I and Tenn. Const. Art. 1 § 28, the right to "instruct [his] representatives and to "apply to those invested with the powers of government for redress of grievances" by "address or remonstrance." [7]

Qualified immunity doesn't allow violations of law, nor does it provide cover for failure in training. The doctrine of qualified immunity is in Harlow v. Fitzgerald, 457 U.S. 800 (1982).

Department guidelines indicate no training as to what constitutes "public offense" in T.C.A. § 40-7-103. **EXHIBIT No. 3.** "Warrants and warrantless arrests," chapt. 1, sect. 2.05. See p. 2. This fact is significant because it shows that defendants are willing to ignore instructions to them about the meaning of "public offense."

Plaintiff relies on his two notices and has defendants' silence as their response, which response is basis for reliance of the laws as written and the cases explaining them that defendants agreed upon.

His arrest was unreasonable because (1) no claim has been made of *mens rea*, or guilty intent, which is to be alleged and proven in every criminal case not under a strict liability exception. [8] *Mens rea* or guilty mind is requisite in all allegations of crime. Plaintiff notes

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[7] Art. 1, sect. 23. That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.

[8]

(a)

(1) A person commits an offense who acts intentionally, knowingly, recklessly or with criminal negligence, as the definition of the offense requires, with respect to each element of the offense.

(2) When the law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element, that element is also established if a person acts intentionally or

indictments in two traffic cases he covered as reporter. **EXHIBIT No. 4,** Indictment in traffic case against Christopher Fiedler, Henry County, Tenn. **EXHIBIT No. 5,** Traffic case indictment of Danny Royce Murphy, Madison County, Tenn. Indictments like these routinely allege criminal intent.

If traffic infractions are crimes, as defendants pretend, *mens rea* must be alleged in the complaint and in the indictment. Plaintiff's arrest produced a criminal complaint. It made no allegation of evil intent. If an alleged traffic violation is materiel for administrative contested case, civil, no *mens rea* need be alleged or proven by evidence. Defendants pretend a damaged taillight is a crime subject to the *mens rea* standard. Yet Mr. Bennett makes no allegation of culpable mind in his affidavit of complaint. Neither do defendants direct their grievance over the taillight or driver license to DOSHS, which has authority to hear the matter under Title 55 via referral, notice or correspondence. Their practice in this case appears very short on understanding about law and their duties in "law enforcement."

The *mens rea* statute at § 39-11-301 regarding culpable mental state is part of the fact base alleged in the complaint. Neither Messrs Garrett nor Bennett can show their arrest victim (plaintiff) acted knowingly and intentionally to violate any law.

Plaintiff relies on defendants' response as to the meaning of both sets of law. They accept two properly served and notoriously published notices. Transportation administrative notice is published in the legal columns of the Times Free Press. **EXHIBIT No. 6,** Affidavit of publication. Plaintiff understands acquiescence to administrative notice by silence is reasonably to be understood as agreement. In bad faith, with malice, defendants on Nov. 22, 2023 turn suddenly against what they admit in response, and they imprison and arrest plaintiff. Entrapment by estoppel should not have profited them that day. And today, they cannot profit by such entrapment in defense against the case's sufficient complaint.

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knowingly. When acting knowingly suffices to establish an element, that element is also established if a person acts intentionally.

(b) A culpable mental state is required within this title unless the definition of an offense plainly dispenses with a mental element.

(c) If the definition of an offense within this title does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable mental state.

§ 39-11-301. Mental state

IV. Principles of notice

"The familiar aphorism teaches that where there is smoke there is fire; but smoke, or something tantamount to it, is necessary to put a person on inquiry notice that a fire has started." Design Basics, LLC v. Chelsea Lumber Co., 977 F. Supp. 2d 714, 723–24 (E.D. Mich. 2013). It's well known that "[t]he law then is, that notice to the agent shall be considered sufficient notice to the principal" Woodfolk v. Blount, 4 Tenn. 147, 150 (1816). Defendants cannot claim qualified immunity for not knowing the law and defending their ignorance of it by ignoring the controlling jurisprudence on privilege and arrest and claiming to be uninformed about well-established law. Notice is actual or constructive. "Constructive notice is notice implied or imputed by operation of law and arises as a result of the legal act of recording an instrument under a statute by which recordation has the effect of constructive notice." *Blevins v. Johnson County, Tennessee,* 746 S.W.2d 678, 683-684 (1988). Leonard v. City of Knoxville, No. E200501899COAR3CV, 2006 WL 1072153, at *11 (Tenn. Ct. App. Apr. 24, 2006). "We hold that 'actual knowledge' of the rules in the handbook was shown by proof that a copy thereof was handed to the appellees." State Board of Regents of University v. Gray, 561 S.W.2d 140, 1978. "'[W]hatever is sufficient to put a person upon inquiry, is notice of all the facts to which that inquiry will lead, when prosecuted with reasonable diligence and in good faith." *85 Texas Co. v. Aycock, 190 Tenn. 16, 28, 227 S.W.2d 41, 46, 17 A.L.R.2d 322. City Fin. Co. v. Perry, 195 Tenn. 81, 84–85, 257 S.W.2d 1, 2 (1953). Notice is generally said to take two forms, actual or constructive. Constructive notice is notice implied or imputed by operation of law and arises as a result of the legal act of recording an instrument under a statute by which recordation has the effect of constructive notice. "It has been well said that 'constructive notice is the law's substitute for actual notice, intended to protect innocent persons who are about to engage in lawful transactions....' " *** Nevertheless, "[a]ctual notice must be given in the absence of a statute providing some means for constructive notice." *** Constructive notice encourages diligence in protecting one's rights and prevents fraud. If either no statute requires recordation to create constructive notice or a recordable instrument has not been properly recorded, then actual notice is required to estop a person." Blevins v. Johnson Cnty., 746 S.W.2d 678, 682–83 (Tenn. 1988) (internal citation omitted).

"Some authorities classify inquiry notice as a type of constructive notice, but in Tennessee, it has come to be considered as a variant of actual notice. " 'The words "actual

notice" do not always mean in law what in metaphysical strictness they import; they more often mean knowledge of facts and circumstances sufficiently pertinent in character to enable reasonably cautious and prudent persons to investigate and ascertain as to the ultimate facts.' " *** . Even a good faith failure to undertake the inquiry is no defense. *** Thus, "'[w]hatever is sufficient to put a person upon inquiry, is notice of all the facts to which that inquiry will lead, when prosecuted with reasonable diligence and good faith.'" Blevins v. Johnson Cnty., 746 S.W.2d 678, 683 (Tenn. 1988).

"'The rule upon the question of notice is, that whatever is sufficient to put a person upon inquiry, is notice of all the facts to which that inquiry will lead, when prosecuted with reasonable diligence and in good faith;' 2 Lead. Cases Part 1, 109; Hilliard on Vendors, 408." Covington v. Anderson, 84 Tenn. 310, 319 (1886)

"'It is considered that whatever is sufficient to put a person upon inquiry is equivalent to notice; and that when he has sufficient information to lead him to the knowledge of a fact, he shall be presumed to be cognizant of the fact.'" Merritt v. Duncan, 54 Tenn. 156, 164 (1872). In 31 U.S.C.A. § 3729, the false claims act, if "allegations or transactions as alleged in the action or claim were publicly disclosed *** from the media," the court bars the action or reduces a whistleblower's fee.

"It is a general rule that whatever puts a person on inquiry amounts in judgment of law to notice, provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding. A person who has sufficient information to lead him to a fact is deemed conversant with it, and a person who has notice of facts which would cause a reasonably prudent person to inquire as to further facts is chargeable with notice of the further facts discoverable by proper inquiry. 66 C.J.S. Notice § 11 (1950). 'It is axiomatic that no man can recover upon the theory of fraud or mistake with respect to any matter of fact about which he has actual knowledge or legally imputed knowledge.' *Blow Stave Co. v. Hattendorf,* 7 Tenn. C.C.A. 415, 417 (1917)." Hill v. John Banks Buick, Inc., 875 S.W.2d 667, 670–71 (Tenn. Ct. App. 1993)

V. Traveling vs. operating

Privilege law requires a distinction between acts privileged, and not privileged. Driving and operating a motor vehicle is a privilege — all parties agree. Defendant Bennett brief at PageID ## 15, 16 cites numerous cases indicating that no citizen has a right to drive or operate a

motor vehicle. If a right exists, it is because driving is a necessary adjunct to life in the United States. No applicant for the driving privilege can be arbitrarily denied the right to obtain license or tag. "These statutes and regulations clearly indicate that the legislature, in enacting the Tennessee Motor Carriers Act, has declared that the public policy of Tennessee includes the **protection, safety, and welfare of the traveling public, including those persons who operate motor vehicles** regulated by the Act." Reynolds v. Ozark Motor Lines, Inc., 887 S.W.2d 822, 825 (Tenn. 1994) (emphasis added). The occupation of operating a motor vehicle is easily entered into, starting with nearly every teenager.

Plaintiff insists on the legal infrastructure underlying this occupation. Regulation of drivers and operators is under privilege. The state assigns administration of the privilege to departments of safety DOR in the public interest in the exercise of overlapping and distinctive tax and police powers.

Defendants' presumption is that the existence of regulatory law creating the calling of "driving" and "operating a motor vehicle" abrogates constitutionally guaranteed rights enjoyment of free movement, free assembly and free communication.

This abrogation occurs despite State v. Booher, 978 S.W.2d 953 that says the acme of private travel is freedom to change domicile interstate. The case says that no form of travel is implicated, impeded or constrained by commercial regulation. "We agree with the appellant that he enjoys a fundamental right to freedom of travel. *** Travel, in the constitutional sense, however, **means more than locomotion**; it means migration with the intent to settle and abide. *Id.* Thus, any American is free to travel from state to state, and to change his state of residence or employment whenever he desires, unrestricted by unreasonable government interference or regulation. *See* 16A C.J.S. *Constitutional Law* § 478 (1969). Whether a specific type of travel is protected by one's constitutional right to travel depends upon the intent which motivates the movement. *** *[A]t no time did the State of Tennessee place constraints upon the appellant's exercise of this right.* His right to **travel** within this state or to points beyond its boundaries **remains unimpeded**. Thus, not only has the appellant's right to freedom of travel not been infringed, but also, we cannot conclude that this right is **even implicated** in this case." *Id.* Booher at 955 (emphasis added). [9]

[9] Plaintiff in reporting on transportation in Tennessee discerns district attorneys routinely misrepresent this sentence to mean the only travel recognized in the constitution is change of domicile interstate.

Plaintiff is in court to inform defendants that ***driving is a privilege.*** Operating a motor vehicle is a privilege. This privilege is under state law, and is controlled by the definition of privilege and its origins in Tenn. Const. Art. 2 § 28. If privilege is comprised of traffic or transportation, that element must be reasonably articulated if an officer is accusing a citizen of being on the privilege without meeting its requirements. "The tax here in suit was not a tax levied upon complainant's water but was a privilege tax levied upon the business of selling the water." Seven Springs Water Co. *v.* Kennedy, 156 Tenn. 1, 299 S.W. 792, 793 (1927).

Driving and operating a motor vehicle fall under the privilege because those acts are not by right, but under discriminatory obtained by a portion of the citizenry who apply for the special favor. Privilege is discriminatory. Some have it. Some don't. "Of course, the legislature has full authority over the highways of the State and may lay out their routes and regulate their use, and it may likewise prescribe the conditions on which highways may be used for gain by carriers for hire." S.E. Greyhound Lines v. Dunlap, 160 S.W.2d 418 (Tenn. 1942). People who don't have the privilege are on the public right of way, too, but they are excluded from the blessings, money profit and opportunity afforded to the other group involved in transportation. Members of this excluded group are left with *automobile use*. All they can do is exercise their rights and liberties on the public way thrown open for public travel. They can, as the Booher court says, make personal movement great and tiny by automobile in ingress-egress enjoyment, but they cannot use the public way for private profit and gain in privilege taxable activity that would otherwise affect the public interest. Only drivers and operators of motor vehicles are free to do that.

The other area of things and activities *excluded from privilege* is denied existence by defendants' theory and policy. The court should take judicial notice that this realm admits the body of constitutionally guaranteed liberties and freedoms, well established in the hearts and minds by administrative notice. If he had to list a single right in use of his auto, that would be under the U.S. Const. Amend. I, freedom of the press, of which right on Nov. 22, 2023, he was enjoying the exercise.

Once the court recognizes the areas of liberty apart from privilege, it will be free to put defendants' gazoozling in perspective. Driving a motor vehicle is under privilege. No law has converted travel by personally used automobile into an offense or a public offense.

The U.S. supreme court recognized the right of commerce exactly 200 years ago. [10] The right to commerce under Titles 55 and 65 implies also the right to non-commerce under the property right of contract. If a car is humming down state highway 153, and it's not being operated as a motor vehicle, all that's left of its use is private rights exercise of someone going to the post office in the Solomon Building under Crandall or a religious service at New City Fellowship under United States v. Seeger, 326 F.2d 846 (2d Cir. 1964), aff'd, 380 U.S. 163, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965).

VI. Misuse of 'public offense'

A. Defendants use 'public offense' to manage privilege

Defendants say plaintiff's reading of T.C.A. 40-7-103 is "misplaced" as "a traffic violation is a public offense." "It has a history of being used synonymously to mean a criminal offense." Defendants cite eight cases, and a 6th circuit case that, in casual use of the phrase "public offense," gets the usage backwards, in contradiction to 40-7-103. "In addition to that non-exhaustive list, the state code gives commissioners power to perform tasks assigned to magistrates, *id.* § 40-1-106, such as issuing arrest warrants for anyone charged with a "public offense[ ]," *id.* § 40-6-202." Norfleet v. Renner, 924 F.3d 317, 320 (6th Cir. 2019). T.C.A. 40-7-103 excludes "public offenses" from the need for an arrest warrant. Defendants say that T.C.A. 40-7-103 does not require "Bennett *** to seek a warrant prior to his arrest" and that plaintiff "is incorrect as a matter of law." It is defendants who are incorrect as a matter of law because the law forbids general warrants.

Defendants in their training policy for warrantless void the statute by saying nothing as to how deputies are to read "public offense." Their interpretation of the law tells the deputy he can arrest anyone for cause at any time without a warrant. If that were true, why would the general assembly have 40-7-103 stating the exceptions? If "public offense" is converted into "offense," defendants void the law. See **EXHIBIT No. 3**, p. 2.

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[10] The appellant had a *right* to go from New-Jersey to New-York, in a vessel, owned by himself, of the proper legal description, and enrolled and licensed according to law. This *right* belonged to him as a citizen of the United States. It was derived under the laws of the United States, and no act of the Legislature of New-York can deprive him of it, any more than such act could deprive him of the right of holding lands in that State, or of suing in its Courts.

Gibbons v. Ogden, 22 U.S. 1, 27, 6 L. Ed. 23 (1824)

Defendants' brief and the county policy are united in saying that both numbered and nonenumerated § 40-7-103 exceptions to the constitution's sect. 7 guarantee is of no account. Defendants hold an officer can make a warrantless misdemeanor arrest at any time for cause. Plaintiff insists "public offense" is the hinge of the whole statute.

Plaintiff asks the court to admit a line separates privilege from nonprivilege. The vocation in question is the most popular calling in Tennessee, that is driving or operating a motor vehicle in privilege. Going past that, he asks the court to recognize the distinction and see the facts of the arrest in terms of privilege law in the acts of the general assembly pursuant to the Tennessee constitution, article II, sect. 28. Defendants concede nothing to the constitution nor the law. All use roads thrown open for public use is only in privilege — an untenable argument this lawsuit challenges. People in any privileged field of enterprise in Tennessee have right to have privilege activity be separable from their nonprivilege activity.

The complaint makes this reasonable and substantive claim. Defendants represent state of Tennessee in prosecuting him criminally. The state is bound to use administrative law, not criminal law, to exhaust administrative remedies. Notice points that out (Doc. 1, PageID# 61).

Privilege operates through licensing agencies. It's that way for architects, barbers, private investigators and others. T.C.A. § Title 62. Professions, businesses and trades. If a licensee violates terms of the license under applicable code, he has a right to be addressed by the proper authority and to be heard civilly in administration.

Complaint makes clear that the facts show defendants criminalize controversies that by law are under UAPA. Plaintiff has a right to a trial by jury for harms of which he complains. The people of Tennessee have a right to have the court determine if privilege administration activities by defendants are mandated.

B. Occupational regulation nowhere else criminalized

The complaint says the constitution's privilege system is the foundation on which traffic administration rests. Plaintiff's arrest is fruit of long-standing policy no doubt popular with officials, law enforcement, attorneys and courts. Longstanding favor of the *status quo* of supervening undifferentiated state police power as applied to the calling of driving a motor vehicle, however, fatally disregards the constitutional design in Tennessee polity that plaintiff intends to restore via his complaint.

This structure is important. Privilege is not ubiquitous and universal. To obtain privilege, one must fill out forms and pay fees. No one is required to enter into commerce via the instrumentality of privilege. Defendants' claims that all use of the road is necessarily and presumptively privileged exhibits a touch of madness. It's like saying a professional hairdresser cutting her nephew's hair on her front porch is subject to citation by the local police officer because she's always on her hairstyling license and it is criminal to trim locks privately. The county is saying a man with a fishing pole in his boat is "fishing without a license" at all times, even though no officer sees the man waiting on a fishing line attached to a bobber in the water. A man carrying a rifle in a forest is not hunting without a license unless a TWRA officer first establishes the act of hunting subject to the privilege. A restaurateur isn't subject to terms of her license while cooking in a home kitchen. No person doing his own books in his business can be criminally charged by a deputy or by the state board of accountancy at T.C.A. § 62-1-104.

➤ **A contractor** "who engages or offers to engage in contracting without a license *** commits a Class A misdemeanor" § 62-6-120. All such claims are administered by the contractor licensing board, § 62-6-104, which issues citations, § 62-6-201, under UAPA. § 62-6-205. A private contractor not holding forth to the public is not subject to accusation. § 62-6-120..

➤ **A tattoo artist** under privilege at T.C.A. § 62-38-203 is subject to the health department, and not arrestable by city police over a matter pertaining to privilege. A tattoo artist crossing into the privileged activity without a permit – she's inking others for pay under a revoked permit – is a potential misdemeanant. § 62-38-120. But due process is preserved. Suspensions are heard "in accordance with the [UAPA]" appealable to the commissioner. "The department is encouraged to utilize its existing resources to collaborate with local law enforcement to identify and assess administrative penalties against persons who violate this part" T.C.A. § 62-38-208. Operating without a permit; penalties. A tattoo artist is not chargeable criminally or under UAPA for any act except one falling under the privilege.

Like these privileged callings or occupations, the business of being a licensed motor vehicle driver is entered by application and payment of fees. The distinction between commerce and non-commerce, between public and private, between regulable and non-regulable, between

taxable and non-taxable must be maintained not just theoretically and academically, but in real life. [11]

In instant case, the plaintiff properly insists in his arrest on his rights, and is criminally charged for doing so. He insists the deputy inform himself of the facts of privilege (cargo, guests paying to be passengers), these being essential elements of the crime. Exercising agent powers for co-defendants, Mr. Bennett insists he sees no evidence of plaintiff's being involved in comments, and makes averments to that effect.

If indeed the deputy discerns a crime being committed, then it was his duty under § 40-7-103, to go to the jail and get a warrant. His complaint must allege each essential element of the crime. T.C.A. § 40-6-203. The oath and the judge's signature put into his hand the arrest warrant. He departs to find and seize the plaintiff under warrant, secure that the liability for a bad arrest is not on him. The constitution requires this process. T.C.A. § 40-7-103 requires this procedure. The complaint sufficiently connects the facts of the case to the law defendants reject, and demands the exceptions law that gives deputies a foot no longer be construed as giving them a mile.

Plaintiff being a press member doesn't make him more protectable under the federal constitution and the state constitution than any other citizen. It just gives him a bit of added strength in making the claim on behalf of the people of Hamilton County that citizens simply can't simply be swept off the streets under general warrant when that law in the constitution and the statute protect them.

Defendants also ignore the fact of administrative notice. They do not have qualified immunity because these documents which are part of the record in this case explain exactly

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[11] The U.S. supreme court in 1906 distinguishes public vs. private. "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution."

Hale v. Henkel, 201 U.S. 43, 74, 26 S. Ct. 370, 379, 50 L. Ed. 652 (1906), overruled by Murphy v. Waterfront Comm'n of New York Harbor, 378 U.S. 52, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964), on grounds not affecting the above excerpt

where their authority may operate upon people moving in cars and upon people who are suspected of having committed a misdemeanor offense.

Plaintiffs administrative notice on 40-7-103 is the basis of his bid for injunctive relief. Plaintiff's administrative notice delivered personally to the sheriff, Jim Hammond, March 1, 2018, is the basis for the broader analysis about the limitations on privilege. That is why he alleges in the complaint that his arrest was false, the imprisonment was false and done knowingly and intentionally.

VII. Argument

The complaint establishes the facts of plaintiff's use of his automobile on private business Nov. 22, 2023, imprisonment, arrest and lack of a warrant. It establishes the legal fact of the state's privilege system of law. It establishes that the motor vehicle law defendants were administering is in fact administrative in nature, not amenable to criminal enforcement under authority of T.CA. § 8-8-213 absent a crime having been committed. Defendants were administering the Tennessee carrier statute. State law assigns regulation of motor vehicles to department of safety and revenue under the secretary of the U.S. department of transportation. T.C.A. 65-15-101.

DOSHS "is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations." The department shall "designate enforcement officers charged with the duty of policing and enforcing this part, and such enforcement officers have authority to make arrests for violation of this part, orders, decisions, rules and regulations" and to " serve any notice, order or subpoena issued by any court, the department of safety, its commissioner or any employee authorized to issue same, and to this end shall have full authority throughout the state."

Troopers' administrative authority includes carrying of pistols and arrest powers. "Such enforcement officers, upon reasonable belief that any motor vehicle is being operated in violation of this part, shall be authorized to require the driver thereof to: (A) Stop and exhibit the registration certificate issued for such vehicle; (B) Submit to such enforcement officer for inspection any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle." The officer under chapter 65 has power to "inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills,

invoices or other evidence of ownership or of transportation for compensation" and to "impound any books, papers, bills of lading, waybills and invoices which would indicate the transportation service being performed is in violation of this part, subject to the further orders of the court having jurisdiction over the alleged violation." T.C.A. § 65-15-106.

Defendants are not included in traffic administration. They have no agreement with state agencies to administer chapter 15 of Title 65, according to the complaint (Doc. 1, PageID # 26, 96). [12]

Defendant individuals are under oath of office or terms of employment, and as enforcers of criminal law are bound by constitution and statute, and doubly bound after being apprised by defendant of the controlling law over the transportation privilege and warrantless arrest. They knew they must review controlling law after being put on awares of facts, laws and court cases properly served administrative notice. Deliberately, maliciously and in bad faith, knowingly and intentionally they made the Nov. 22, 2023, arrest absent the warrant under T.C.A. § 40-7-103 and upon a person communicating his person and property apart from privilege in T.C.A. § Title 55, as sufficiently alleged in the complaint (Doc. 1, PageID # 27, ¶ 101)

On the scene, the undisputed fact is defendant Bennett declaimed his authority under Title 55 with, "You're not [operating in commerce]. I'd say you're not. You're not. If I take this before a judge he'll also state that." (Doc. 1, PageID # 13). Mr. Bennett swears off his own *causus belli.*

If defendant Bennett is going to use the motor vehicle law to gain probable cause for prosecuting a crime, he obligates defendants to deal with the entirety of the commercial law, including its origins in Tenn. Const. Art II 28, with Title 55 regulating vehicular traffic.

Mr. Bennett's averment comes after a proper challenge to authority for the arrest by plaintiff, who says in his first words: "I rebut the presumption, sir, I'm operating a vehicle. Right now, I would rebut the claim that I am driving and operating a motor vehicle. Is it not possibly prudent for you to determine whether or not I'm involved in the activity under the privilege right

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[12] "[T]he HCSO [Hamilton County sheriff's office] does not possess any records related to contracts, agreements, arrangements, delegation orders, or grants of authority between the HCSO and the **U.S. Department of Transportation, Tennessee Department of Transportation, Tennessee Department of Revenue,** nor the **Tennessee Department of Safety,**" the department says Oct. 30, 2024, via general counsel Brian Bush (bold in original).

now? That would be under [Title] 55, chapter 50, and also under [Title] 65 under the Tennessee code annotated, which is "carriers.'"

This exchange is at the heart of the complaint and properly frames the premise of this lawsuit. The court need look no further into the facts of the encounter.

The deputy is administering the vocation and privilege law out of Art. II § 28 upon a person, as he sees it, caught in the act of "driving a motor vehicle" illegally. Plaintiff politely asks Mr. Bennett if he could identify the essential elements of privilege taxable activity such as cargo or passengers, and written evidences of same.

If there is no commerce, there is no *actus reus* to establish authority for defendants to act criminally upon plaintiff. Defendants' criminal cause gives the county magistrate or Hamilton County general sessions court judge not iota of subject matter jurisdiction.

Defendants would have the court to believe that Titles 55 and 55 void the § 40-7-103 standard for warrantless arrest. They want the court to believe that these titles envision criminal treatment of matters the law gives to administrative oversight under UAPA. Vehicle registration doesn't void the arrest warrant requirement, nor free exercise by nonprivilege users of the road who are **not** on the public right of way for any for private profit purpose, as described in **EXHIBIT No. 2**.

Four articulated exceptions to the constitutional warrant requirement in § 40-7-103 touch on motor vehicles and automobiles in accidents that involve intoxication or flight. Plaintiff is not part of an accident and does not flee the scene. Defendant Bennett has duty to get an arrest warrant for the purported crime.

Defendants prosecuted plaintiff in the name of state of Tennessee with a void case in plaintiff's arrest, imprisonment and jailing. They ask the court to believe that it is of no bad faith aggravated tort that plaintiff is arrested and that the case is dismissed before the grand jury had a chance to hear the allegations.

Defendants agree with Justice Roger Taney in Dred Scott v. Sandford, 60 U.S. 393, 396. 1856 that Hamilton Countians are no better than slaves insofar as local citizens have a right of free movement. Taney says negroes should not be accorded rights as citizens because they would be able to express themselves and be on the roads "*without pass or passport.*" [13]

[13] The complaint alleges defendants operate an attainder against members of the public who exercise rights not under privilege.

The totality of circumstances in defendants' arrest of plaintiff make it different from the numerous cases cited in motions to dismiss. What did Messrs. Bennett and Garrett reasonably know or believe the morning of the arrest? The answer must include what they actually knew by training and on-scene circumstances, and must include defendants' actual or putative or constructive knowledge pursuant to administrative notice that fully briefed them on the issues in this lawsuit.

This case establishes evidence of high-level, detailed, even ***exhaustive*** knowledge that Hamilton County and its employees had Nov. 22, 2023, of black-letter law, warning against illegal activity. They knew about privilege law created by the general assembly under Tenn. Const. Art. 2 § 28 to grant privileges. Other cases exploring qualified immunity don't bring up privilege administration or general warrants. Defendants' cases cited cannot justly be used to dismiss the complaint.

Unlike other jurisdictions (1) Tennessee due process rights that inhere in the arrest warrant requirement in § 40-7-103 law give greater protection than federal law, and (2) privilege defines regulatory and taxing police power as distinct from conservator of the peace powers at T.C.A. § 8-8-213, describing the sheriff's duty. If attorneys in other cases don't bring up privilege as a cause, they leave hanging over their cases the presumption of commerce unrebutted. This presumption of commerce controls defendants' pleadings, and is not sufficient

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> "For if they [blacks] were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police [60 U.S. 393, 417] regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens ***in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction,*** to sojourn there as long **as they pleased, to go where they pleased at every hour of the day or night without molestation,** unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State."

Dred Scott v. Sandford, 60 U.S. 393, 396. 1856 (emphasis added)

to defeat the complaint that takes them at their word that Bennett was conducting a "traffic [transportation] stop."

This case challenges the premise of sheriff and deputy criminalization of administrative wrongdoing or defect. The complaint is an attack on police and deputy violence against the public apart from law, starting with general warrant arrest. It defies the pretense by law enforcement agencies that every person in an automobile by people is either ***in*** or ***presumptively in*** the activity subject to privilege.

To summarize: The complaint says defendants, pursuing county policy, arrest defendant under the light law in Title 55. Plaintiff rebuts presumption of commerce, and defendant Bennett yields, saying plaintiff's not in commerce. Mr. Bennett's words are reasonably in line with control and personal suasion by Mr. Garrett as to how deputies conduct "traffic stops." When plaintiff refuses to yield and admit privilege taxable activity (which falsity would have constituted a prosecutable false statement, T.C.A. § 39-16-502), defendants maliciously stack a second charge against him — failure to exhibit license on demand. That can't stand unless the first is properly made under Tennessee privilege. Privilege is the controlling law in this case, described by Phillips. When on the privilege, a licensee must obey all laws and comply with rules he agreed to obey on application and payment of fee for the privilege. That the prosecutor refuses to lift a finger to ratify their criminal allegations is significant. The state dismisses the case, which a judge expunges.

VIII. Conclusion

Plaintiff moves the court to find the complaint sufficient as to facts alleged and torts identified to proceed to motion for injunctive relief and trial by jury.

Defendants fail to account for properly served administrative notice intended to help them perform peacekeeping duties within the law. They fail to deny they acted knowingly and intentionally pursuant to their policy, said policy outlined in their memoranda supporting motions to dismiss. Defendants fail to respond to on-scene challenge plaintiff makes personally to defendant Bennett, namely his authority under Title 55. Mr. Bennett declaims authority under privilege taxable activity, and has no reasonable articulable suspicion to make under Title 39.

The complaint challenges the pervasive belief and misunderstanding that damaged tail lights and similar Title 55 traffic violations under state privilege are **criminally prosecutable and jailable crimes** by a county.

Operation of a motor vehicle is a state-exclusive privilege. "The licensing as a privilege of the driving of any motor driven vehicle upon the roads, streets or other highways of the state is declared an **exclusive state privilege** and no tax for such privilege under **any guise or shape** shall hereafter be assessed, levied or collected by any municipality of the state." T.C.A. § 6-55-501. So jealous is the general assembly for its privilege system that "[a]ll ordinances, rules or regulations heretofore passed, enacted or promulgated by any incorporated municipality of the state in conflict with § 6-55-501 are **declared inoperative and of no effect**" and that "(c) No municipality shall require any person who does not reside within the municipality's corporate boundaries to purchase a city automobile tag, or pay any license fee, regulatory fee, inspection fee, safety inspection fee, or any citation or fine for noncompliance with any regulatory, license, or inspection requirement, or tax of whatever nature for the privilege of driving a motor vehicle on the roads, streets or highways of such municipality" T.C.A. § 6-55-502.

Parties in innumerable other §1983 cases don't raise claims presented here, namely (1) the jurisprudence of statutory "public offense," and (2) the claim in the traffic law itself that UAPA is locus under which parties in privilege taxable activities might be corrected or chastised for damaged taillights.

Cases cited in motions to dismiss overlook the premise of this lawsuit. There are constitutionally guaranteed, God-given, unalienable and inherent rights defendants breached by policy, custom and usage of defendants on and *prior to* the day of plaintiff's arrest. These prior acts are a policy determination to use the court to *destroy* Tenn. Const. Art. 2 § 28 and T.C.A. § 40-7-103 as barriers to their capricious agenda.

The system of taxation and regulation of commercial and for-profit private motor carriers and motor private carriers of persons is in the public interest. That being so, defendants cannot use privilege administration to overwrite or abrogate constitutionally protected rights. Privilege regulation at Titles 55 and 65 is indeed constitutional. However, no court has authority to reshape the general assembly's system of privilege by finding or declaring that all for-profit privilege taxable activity is co-extensive with all movement on the roads among members of the public.

That would be moving a landmark — a forbidden act. "You shall not remove your neighbor's landmark, which the men of old have set, in your inheritance which you will inherit in the land that the LORD your God is giving you to possess" Deut. 19:14.

The complaint intends to constrain actions by public officials who act as if the state sovereignty they claim to serve allows them to violate the constitution and black-letter statute. Law enforcement departments and municipal governments are **not** above the law, and can be held to account despite probable decades of violence against tens of thousands of people brought to trouble, jail, humiliation, losses, deprivations by their poaching on authority of other parts of government. Maintaining the peace and suppressing crime are not, the complaint shows, lawfully on display in defendants Bennett's and Garrett's actions.

When tax and criminal police power intersect, the deputy or officer is pursuing criminal offenses that occur in the context of the regulated roadway. In other words, if a crime occurs on the roads open to the public, conservator of the peace powers operate. But the traffic law, per se, is not amenable to conservator of the peace enforcement. Defendants' public service in Hamilton County sheriff's office is **separate from** economic authority given state of Tennessee under the constitution to regulate motor vehicle privilege taxable activity on the roads.

Reasonableness of the arrest and imprisonment depends on "information available to the officer at the time of the arrest." Such statements in cases granting qualified immunity highlight "information available" and "totality of circumstances." Exactly. The information available to all defendants was detailed administrative notice as *pre-briefing* of this lawsuit.

Plaintiff agrees the fact that an arrest does not result in a conviction does not necessarily mean that the arrestee has a valid false arrest claim. That situation, cited by defendants (Doc. 15, PageID # 162), is not active here, as the case against plaintiff was so baseless that the state didn't even take it before the grand jury, and dismissed it effectively on sight. Plaintiff's arrest and prosecution suggest a much larger problem among defendants. They carelessly and aggressively create meritless criminal cases without arrest warrants that overbook the district attorney's office and injure many, many members of the innocent public.

Plaintiff asks the court to deny motions to dismiss and consider the complaint facially sufficient.

Respectfully submitted,

David Jonathan Tulis

David Jonathan Tulis

Exhibits

EXHIBIT No. 3 Sheriff department arrest warrant manual "Warrants and warrantless arrests," chapt. 1, sect. 2.05.

EXHIBIT No. 4 Indictment in traffic case against Christopher Fiedler, Henry County, Tenn.

EXHIBIT No. 5 Traffic case indictment of Danny Royce Murphy, Madison County, Tenn.

EXHIBIT No. 6 Times Free Press affidavit of publication of classified legal ad

CERTIFICATE OF SERVICE

I hereby certify that on this Friday, the 3rd day of February 2025, a copy of this document is being sent by e-mail to Sharon Milling of the Hamilton County attorney's office at the following address:
SharonM@hamiltontn.gov

LAW ENFORCEMENT ROLE AND AUTHORITY

OFFICE OF THE SHERIFF

CHAPTER: 1 LAW ENFORCEMENT ROLE AND AUTHORITY

EXHIBIT 3

Document Owner: Spencer Daniels (Captain Uniform Services)	Date Created: 10/29/2014
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ACA Standards:	
NCCHC Standards:	

CHAPTER: 1 LAW ENFORCEMENT ROLE AND AUTHORITY

SECTION: 2.05 WARRANTS AND WARRANTLESS ARRESTS

A. Rights of the arrestee - Whenever a deputy makes an arrest, whether with or without a warrant, the deputy will inform the person arrested of his authority and of the reason for the arrest. If the arrest was made without a warrant, a warrant will be obtained by the deputy as soon as possible. Adult defendants will be taken before a Hamilton County General Sessions Court Judge or magistrate at the jail after court hours, so that a court date and bond be set.

The deputy will complete an; <1.2.5(A)>

1. Arrest Report/Affidavit if no warrant has been filed
2. A warrant as per Tennessee Statute if one has not already been issued
3. Receive a mittimus from a court clerk allowing the jail to process the detainee; unless other court orders from a judge have already indicated bond or instructions for holds etc....

a) During the intake process at the jail, the arrestee will be allowed by the booking officer to make a telephone call to an attorney, relative or any other person he/she shall choose before being booked. If the arrested person does not choose to make a telephone call, then he/she may be booked or docketed immediately (TCA 40-7-106 (b).

b) All adults arrested will be booked into the Hamilton County Jail with the Hamilton County booking computerized report system, they will be photographed electronically into a central photographic database, and electronic fingerprints will be taken of defendants as well as electronic submission of fingerprints and charges to TBI as required by law. <1.2.5(b,c)>

c) If the defendant desires to voluntarily give a spontaneous statement regarding the offense in which defendant is charged information will be documented. If the deputy initiates such accusatory questions, the deputy must first advise defendant of his Fifth Amendment rights against self-incrimination an Admonition and Waiver of Rights form shall be signed. d) If a person receives an injury, prior to or during the arrest, and medical attention is requested or needed, such medical attention will be offered and obtained as soon as possible. The deputy will describe the injuries and the nature of the medical attention obtained on the Sheriff's Office

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Arrest Report for that person. e) Diplomatic and consular officers, ambassadors, ministers, and career consular officials should be granted their respective privileges, rights, and immunities as directed by Consular Notification and Access/Foreign Nationals 1.1.4 in written directives.

B. Warrantless Arrests - In accordance with Tennessee Code Annotated 40-7- 103, a deputy may, without a warrant, arrest a person under the following circumstances:

1. For a public offense committed or a breach of the peace threatened in the deputy's presence;

2. When the person has committed a felony, though not in the deputy's presence;

3. When a felony has in fact been committed, and the deputy has reasonable cause for believing the person arrested to have committed it;

4. On a charge made, upon reasonable cause, of the commission of a felony by the person arrested;

5. When the person is attempting to commit suicide;

6. When, based upon personal investigation, the deputy has probable cause to believe that the driver at the scene of an accident committed an offense under Title 55, Chapters 8 and 10 of the Tennessee Code Annotated. (This provision shall not apply if there was no personal injury or the property damage was less than $1,000, unless the deputy has probable cause to believe that the driver has committed an offense under TCA 55 10-401 driving under the influence of an intoxicant, drug, or drug producing stimulant.);

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7. If a deputy has probable cause to believe the driver at the scene of a traffic accident has violated TCA 55-10-401, the deputy may arrest the driver at the scene of the accident or up to four hours after such driver has been transported to a health care facility, if emergency medical treatment for such driver is required;

8. If a deputy has probable cause to believe that a person has violated one or more of the conditions of release imposed pursuant to TCA 40-11-150, and verifies that the alleged violator received notice of such conditions, the deputy shall, without a warrant, arrest the alleged violator regardless of whether the violation was committed in or outside the presence of the deputy. (This includes violation of an Order of Protection.); or

9. Incidents of domestic abuse in accordance with TCA 36-3-619.

C. Definitions/Domestic Violence Arrests:

1. Weapon/Firearm - means any weapon designed made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.

2. Preferred Response - means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest.

a) When an officer investigates an allegation that a domestic abuse occurred, the deputy shall make a complete report. If a deputy decides not to make an arrest or decides to arrest two or more parties, the deputy shall include in the report the grounds for not arresting anyone or for arresting two or more parties.

b) If a deputy has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony, or was committed within or without the presence of the deputy, the preferred response of the deputy is arrest.

1. If a deputy has probable cause to believe two or more persons committed a misdemeanor or felony, or if two or more persons make complaints to

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the deputy, the deputy shall attempt to determine who the primary/predominant aggressor was. Arrest is the preferred response only with respect to the primary/predominant aggressor. The deputy shall presume that arrest is not the appropriate response for the person(s) who were not the primary/predominant aggressor. If a deputy believes that all parties are equally responsible, arrest is not the preferred response for either party, and the deputy shall exercise their best judgment in determining whether to arrest any parties. To determine who is the primary/predominant aggressor, the deputy shall consider the following:

1. The history of domestic abuse between the parties;
2. The relative severity of the injuries inflicted on each person;
3. Evidence from the persons involved in the domestic abuse;
4. The likelihood of future injury to each person;
5. Whether one of the persons acted in self-defense; and 6. Evidence from witnesses of the domestic abuse.

D. A deputy shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by members of this agency. A deputy shall not base the decision of whether to arrest on the consent or request of the victim or on the deputy's perception of the willingness of the victim or of a witness to testify or participate in a judicial proceeding.

E. If a deputy has probable cause to believe that a criminal offense involving abuse against a family or household member has occurred, the deputy shall seize all weapons that are alleged to have been used or have been threatened to be used by the abuser in a commission of a crime.

F. A deputy may seize a weapon that is in plain view, incident to an arrest or discovered pursuant to a consensual search, if necessary for the protection of the deputy or other persons. The deputy is not required to remove the weapon if he/she believes it is needed by the victim for

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self-defense. The seizure of weapons shall be listed on the incident report and processed as evidence. The judge shall determine the disposition of such weapons as provided by law.

G. When deputies respond to a domestic violence call, in which there are apparent visible injuries, the deputy should photograph the injuries to be used as evidence in court.

H. The deputy shall fill out the appropriate domestic violence form informing the victim of all their rights and assistance available and leave a copy prior to leaving the scene of the call. (See Attached Domestic Violence Form in Attachment Section)

I. The deputy shall offer to transport the victim to a place of safety such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the deputy to transport the victim, in which case the deputy shall offer to arrange for transportation as soon as practicable. The deputy shall advise the victim of other services in the community and give the victim a written notice of legal rights available.

J. The deputy shall offer to transport the victim to the location where arrest warrants are issued and assist the victim in obtaining an arrest warrant against the alleged abuser.

RELEASE OF A DEFENDANT WHO WAS ARRESTED FOR AN ACT OF VIOLENCE OR ON A VIOLATION OF AN ORDER OF PROTECTION.

a. The Hamilton County Jail shall notify a victim (or family member) of violence or a violation of an Order of Protection that a defendant has been released from jail and of any conditions that were placed on the defendant upon his release.

b. The notification of a victim(s) of a violent crime will be conducted by the Hamilton County Jail through the use of Appriss victim notification software known as (VINE). Information regarding this victim notification software system can be located at http://www.appriss.com/VINE.html

c. A defendant who is arrested for offenses defined in Title 39 Chapter 13 which includes but is not limited to Domestic Violence, Stalking, and Violations of Orders of Protection shall not be released on bond within 12 hours of such arrest unless a determination has been made by a

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Judge of jurisdiction or the jail magistrate on duty that he/she is not a threat to the alleged victim. Deputies serving such warrants will write the time the defendant was taken into custody on the top of the warrant.

SEE DOMESTIC VIOLENCE FORM IN ATTACHMENT SECTION: FORM TO BE GIVEN TO DOMESTIC VIOLENCE VICTIMS.

D. Persons asserting diplomatic status will be handled according to standards 1.1.4 and 61.1.3. of this General Orders Manual.

DNA Submissions TCA 40-35-321

As pursuant to TCA 40-35-321 buccal DNA swabs (kits and instructions provided by TBI) will be taken by the booking officer and submitted to property and sent to TBI crime lab for persons being booked for the following offenses.

TCA CODES

Murder, First Degree 39-13-202

Murder, Second Degree 39-13-210

Kidnapping, Aggravated 39-13-304

Kidnapping, Especially Aggravated 39-13-305

Aggravated Assault 39-13-102

Aggravated Child Abuse 39-15-402

Robbery 39-13-401

Robbery, Aggravated 39-13-402

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Robbery, Especially Aggravated 39-13-403

Burglary, Aggravated 39-14-403

Burglary, Especially Aggravated 39-14-404

Carjacking 39-13-404

Sexual Battery 39-13-505

Sexual Battery by an authority figure 39-13-527

Sexual Battery, Aggravated 39-13-504

Statutory Rape, Aggravated 39-13-506(c)

Statutory Rape by authority figure 39-13-532

Rape 39-13-503

Rape, Aggravated 39-13-502

Rape of a child 39-13-522

Rape of a child, Aggravated 39-13-531

Aggravated Arson 39-14-302

Attempt of any of the above 39-12-101

Solicitation of any of the above 39-12-102

Conspiracy of any of the above 39-12-103

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Criminal Responsibility of any of the above 39-11-402

Facilitating the Commission of any of the above 39-11-403

Being an accessory after the Fact 39-11-411

COUNT 2

STATE OF TENNESSEE, MADISON COUNTY

THE GRAND JURORS OF Madison County, Tennessee, duly Empaneled and sworn, upon their oath, present that:

DANNY ROYCE MURPHY

on or about June 25, 2021, in Madison County, Tennessee, and before the finding of this indictment, did knowingly operate a motor vehicle upon a public highway, in Madison County, Tennessee, without evidence of financial responsibility, in violation of §55-12-139, Tennessee Code Annotated, all of which is against the peace and dignity of the State of Tennessee.

Section 12 Indictments shall conclude, "against the peace and dignity of the state."

Jody Pickens
District Attorney General
26th Judicial District

EXHIBIT 5

STATE OF TENNESSEE, HENRY COUNTY
CIRCUIT COURT, NOVEMBER 2024 TERM 17112

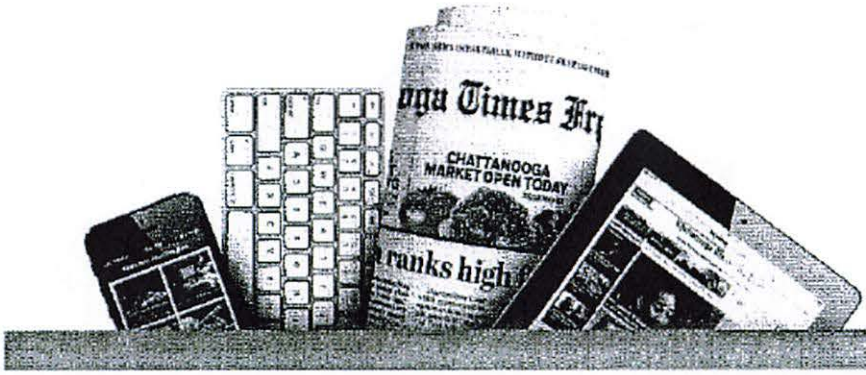
The Grand Jurors of the State of Tennessee, duly elected, impaneled, sworn and charged to inquire in and for the body of the County of HENRY, in the State aforesaid, upon their oath present:

That CHRISTOPHER MICHAEL FIEDLER, heretofore, to-wit: On or about JULY 3, 2024, before the finding of this indictment, in the County aforesaid, then and there did knowingly or intentionally drive or operate a motor vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large, to-wit: VOLUNTEER AND EMERALD COVE, PARIS, TENNESSEE, at a time when CHRISTOPHER MICHAEL FIEDLER'S privilege was suspended by the State of Tennessee, thereby committing the offense of DRIVING WHILE LICENSE SUSPENDED, in violation of T.C.A. §55-50-504, against the peace and dignity of the State of Tennessee.

STATE OF TENNESSEE
COUNTY OF HENRY
I, Mike Wilson, Clerk of the Circuit Court, do hereby certify that the foregoing is a true and accurate copy of the original filed in this cause in my office in M.B. ___ Pg. ___
This 4 day of Dec., 2024
Mike Wilson, Clerk
By _____ D.C.

FILED 11/4/2024 AT 4:16 A.M. P.M.
MIKE WILSON, CLERK
BY _____ D.C.

J. NEIL THOMPSON
DISTRICT ATTORNEY GENERAL



Account #: 26734
Company: NOOGANOMICS
Client:
Ad number: 121094
PO#:
Note:

EXHIBIT 6

AFFIDAVIT • STATE OF TENNESSEE • HAMILTON COUNTY

Before me personally appeared Jim Stevens, who being duly sworn that he is the Legal Sales Representative of the CHATTANOOGA TIMES FREE PRESS, and that the Legal Ad of which the attached is a true copy, has been published in the above named newspaper and on the corresponding newspaper website on the following dates, to-wit:

Chattanooga Times Free Press: 10/19/18, 10/26/18, 11/02/18, 11/09/18; TimesFreePress.com: 10/19/18, 10/26/18, 11/02/18, 11/09/18.

And that there is due or has been paid the CHATTANOOGA TIMES FREE PRESS for publication the sum of $205.50. (Includes $10.00 Affidavit Charge).

Jim Stevens

Sworn to and subscribed before me this date: 11/09/2018

Jacqueline Mansueto

My Commission Expires 03/07/2021

JACQUELINE MANSUETO
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY
MY COMMISSION EXPIRES MARCH 7, 2021

Chattanooga
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TRANSPORTATION ADMINISTRATIVE NOTICE

TAN served (all dates 2018) on City of Chattanooga Feb. 20, Hamilton County sheriff's department March 1, City of East Ridge May 24, Gov. Bill Haslam March 5 and City of Red Bank Aug. 7. TAN is filed in Rhea County, Tenn., BK/PG 470/118-138, a true copy at http://nooganomics.com/wp-content/uploads/2018/10/Transportation-Administrative-Notice-Tennessee.pdf. TAN prepared by David Jonathan Tulis, journalist, affiant, Hamilton County.