United States Court of Appeals for the sixth circuit

David Jonathan Tulis	)	
Appellant	)	
	)	Case No. 25-5430
V.	)	
	)	**ORAL ARGUMENT REQUEST**
Brandon Bennett *et al*	)	
Appellees	)	

Appellant brief challenging dismissal of case

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Jurisdictional statement

This cause was timely filed Nov. 19, 2024, in U.S. district court Tennessee eastern division under authority of U.S. Amend. IV, XIV and 42 U.S.C. § 1983. The clerk enters the trial court's final order of dismissal April 9, 2025 (Doc. 38). Appellant timely files notice of appeal May 8, 2025 (Doc. 39). The controversy is over plaintiff's federal rights to be free of criminal enforcement of the motor vehicle laws when Tennessee code titles 55 and 65, chapter 15, require that any controversy under a state license be handled pursuant to movant state's duty to exhaust administrative remedies under the uniform administrative procedures act at T.C.A. § 4-5-101 *et seq* prior to resorting to criminal prosecution in allegations under the privilege law.

The court of appeals has jurisdiction over challenges to rulings rising from the eastern Tennessee district of the federal court system, with all fees paid for right to a hearing.

1. Questions for review

Appellant seeks reversal of the lower court's dismissal under these questions.

i. As driving a motor vehicle is a privilege taxable activity, is it proper for the trial court to allow a sheriff to administer the economic privilege law at T.C.A. § title 55 under criminal authority when privilege law is administered by occupational board or commission under procedures in T.C.A. § 4-5-101 *et seq*, the uniform administrative procedures act ("UAPA"), with the commissioner of safety presiding, and is defendants' conservator of the peace criminal authority sufficiently challenged in the complaint to allow the case to proceed to trial for damages?

ii. Given that defendants were under administrative notice about (1) protected rights under the motor vehicle law and UAPA, (2) the federal nature of privilege taxable activity in driving and operating a motor vehicle, and (3) the nature of a damaged taillight not being in the nature of a "public offense" under T.C.A. § 40-7-103, does the court justly ignore complaint facts to find probable cause of a *crime* for defendants to arrest appellant?

iii. Does the complaint sufficiently show that appellant claims material facts and legal defenses waived in other cases such as Atwater v. City of Lago Vista, 532 U.S. 318 (2001), such opinions held by the trial court to void by presumption Tennessee privilege law in title 55 with citizen rights protected under UAPA right to administration prior to criminal adjudication?

iv. Should high protections against warrantless arrest claimed by this case be read *in pari materia* with rulings such as Atwater the trial court alleges void and nullify state law by implication but which laws remain standing and enforceable nevertheless, showing that arrest violates appellant's rights?

The court accepts defendants' program, custom and usage of imposing police power without the differentiation between —

1. Criminal authority upon criminal activity (assault, robbery, theft) and
2. Authority to regulate privilege taxable activity pursuant to UAPA (barbering, hairdressing, plumbing or driving a motor vehicle — each a privilege taxable activity under license under a state commissioner) tortiously handled by defendants.

The complaint sufficiently shows dispositive facts in favor of constitutionally guaranteed rights of the petitioner. The complaint and facts show ***non-waiver*** of individual claims of protection under law requiring exhaustion of administrative remedies in a contested case in DOSHS under UAPA. It shows defendants were apprised of relevant law ***before*** they arrested appellant, their acts in bad faith and injurious, as sufficiently alleged in the complaint. The court errs in ignoring distinctions in the motor vehicle law that require commercial regulation to be subject to UAPA and not, at least initially, maintenance of the peace criminal authority.

2. Standard of review

This Court reviews a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) **de novo**. Hill v. Snyder, 878 F.3d 193, 203 (6th Cir. 2017). Under this standard, the Court accepts all well pleaded factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff. Directv, Inc. v. Treesh, 487 F.3d 471, 476 (6th Cir. 2007). A complaint must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Legal conclusions are reviewed independently, without deference to the district court's determination. United States v. White, 492 F.3d 380, 396 (6th Cir. 2007). Constitutional and statutory interpretation questions, including whether an arrest violates due process or exceeds statutory authority, are also reviewed **de novo**. United States v. Skinner, 690 F.3d 772, 777 (6th Cir. 2012).

To the extent this appeal raises questions regarding the structure and scope of Tennessee's UAPA, including the requirement that the state exhaust administrative remedies before pursuing criminal enforcement of privilege-based regulatory laws, those statutory and procedural questions are also subject to **de novo** review. Ralls v. Positive Safety Mfg. Co., 832 F.2d 1258, 1261 (6th Cir. 1987).

The court's ignoring the fact base of administrative notice in determining defendants' reasonableness in arresting appellant and the totality of circumstances in the fact base of the complaint would be under the plain error standard.

3. Basic facts of the case

On Nov. 22, 2023, appellant David Jonathan Tulis, a radio journalist on First Amendment business, was traveling in his privately owned 1999 Toyota RAV4 to his radio station in Chattanooga. He was stopped by Hamilton County Deputy Brandon Bennett during what he called a routine "traffic stop." His basis for the stop was a partially damaged taillight emitting visible white light.

Appellant was not transporting passengers or cargo, was not operating for hire, and was not engaged at the time relevant to this case in any commercial enterprise subject to state regulation under title 55 or title 65. Appellant was traveling on a road thrown open for public use. [1]

Nonetheless, Deputy Bennett initiated an enforcement action using criminal arrest powers, demanding production of a driver license and asserting probable cause to arrest based solely on the taillight condition.

During the encounter, appellant explicitly rebutted any presumption that he was engaged in privilege-based activity. He advised Deputy Bennett that he was not operating a motor vehicle in commerce and requested that the deputy determine whether he had evidence of any such activity.

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

BENNETT "You're not. 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 ¶¶ 45, 46).

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[1] "The roads belong to the public, and the county court holds them in trust for the public, and while it is proprietor for the purposes of its trust, it is not proprietor in the sense that it is the owner of the roads against the public, or any member thereof. A public road is a way open to all the people, without distinction, for passage and repassage at their pleasure."

Sumner Cnty. v. Interurban Transp. Co., 141 Tenn. 493, 213 S.W. 412, 413 (1919)

Despite this admission, Bennett arrested appellant, placed him in handcuffs, and transported him to jail.

Appellant was charged with two alleged misdemeanors under Title 55: operating a vehicle with a defective taillight, and refusal to exhibit a driver license upon demand. These offenses were initiated and processed through criminal court, bypassing administrative procedures required for disputes involving licensed privilege activity. No victim complaint or evidence of public danger was presented, and no magistrate warrant was sought or obtained.

At the time of the stop, appellant had previously served Hamilton County government and the sheriff's department with formal administrative notices concerning the legal limits of police power over transportation-related privileges. These notices, served in 2018 and 2020, and again reiterated orally at the time of arrest, informed officials of the need to exhaust administrative remedies before initiating criminal prosecution for privilege-based regulatory breaches. None of these notices were rebutted or legally challenged.

Appellant's conduct on the day in question was in full reliance on his understanding of state law, and his actions were consistent with legal protections afforded to licensees under Tennessee's administrative code. He was exercising his constitutional rights of movement and press, not engaging privilege taxable activity or the for-profit occupation of operating for hire.

The criminal charges against appellant were dropped and the case expunged after he filed a pre-plea affidavit asserting the exhaustion of remedies doctrine and objecting to the criminal forum. **APPENDIX EXHIBIT No. 1**. Nevertheless, the arrest and jailing, conducted without a warrant and contrary to express limitations under Tennessee law, form the basis of this appeal. The district court upheld the arrest as reasonable, rejecting appellant's argument that the matter was strictly administrative and unripe for criminal prosecution.

4. District court procedural history

Appellant timely files suit Nov. 19, 2024. He petitions for recusal of the county attorney from serving defendants Bennett and Garrett sued in their personal capacities (Doc. 9), which is denied. On Jan. 13, 2025, he files motion for temporary restraining order (Doc. 11) to halt general warrants and a draft order (Doc. 11-1), an affidavit in support (Doc. 12), a brief in support defending T.C.A.§ 40-7-103 (Doc. 13). Defendants file motions to dismiss on Jan. 14, 2025, (Docs. 14, 16) and a Response in opposition to plaintiff's motion for temporary restraining

order against defendants' general warrants program (Doc 25) on Jan. 28, 2025. and appellant files response (Doc. 27, 28) on Feb. 3, 2025. Plaintiff files Request to take mandatory judicial notice per Fed. R. Evid. 201 on Feb. 3, 2025 (Doc. 27). His Response to motion to dismiss as to Bennett, Garrett is filed Feb. 3, 2025. In turn, plaintiff files Reply to response opposing motion for injunctive relief supported by **EXHIBIT No. 6,** Administrative notice; Affidavit on right of ingress, egress from abode, soil in Tennessee (Doc. 29).

5. Summary of the argument

Tennessee title 62 regulates 44 occupations or trades. The utilities statute at title 65, chapt. 15, regulates privilege shippers, carriers and transporters using motor vehicles. The motor vehicle law in title 55 details controls on the privilege of operation of a motor vehicle.

DRIVING MOTOR VEHICLE IS PRIVILEGE

The word "occupation" as used in connection with the licensing thereof and the imposition of taxes thereon is identical in meaning with the word "privilege" and includes any business, trade, profession, pursuit, vocation, or calling. A privilege is the exercise of an occupation or business which requires a license from some proper authority, designated by some general law, and is not free to all, or any, without such license. [2] The possession of an occupational license is a privilege.The term embraces any and all occupations that the legislature may in its discretion declare to be a privilege and tax as such. In order to constitute a privilege, the grant must confer authority to do something which, without the grant, would be illegal. 53 C.J.S. Licenses § 2

REDRESS IN EQUITY JURISDICTION

In each occupation, allegation over misuse of a license is heard in a contested case under UAPA. Infractions are not crimes, but breaches of agreement. Regulation of carriers is extensive, requiring an entire volume in title 55. Driver licenses are issued and revoked "upon the principles of equity." Sullins v. Butler, 175 Tenn. 468, 135 S.W.2d 930, 933 (1940). Like virtually every adult Tennessean, appellant applies for and pays fees to enter the occupation under the uniform classified **and commercial** driver license act of 1988 (emphasis added).

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2 Draughon v. Fox-Pelletier Corp., 174 Tenn. 457, 126 S.W.2d 329 (1939) 53 C.J.S. Licenses § 2

"Traffic stops" are application of tax enforcement authority upon commercial activity, as "traffic" and "transportation" are synonyms for the for-hire and for-profit use of the public road for private gain under privilege. They fall under the economic — vs. the peacekeeping, anticrime, suppression of riot — part of police power. Defendants are under administrative notice about the disabilities in titles 65 and 55 and about appellant's constitutionally protected rights not disturbed or abrogated by regulation.

The court wrongly accepts defendants' criminalizing *economic controversies under privilege.* Complaint sufficiently alleges they convert the premise of privilege taxable activity under administrative law at T.C.A. § 4-5-101 *et seq* into crimes they target with conservator of the peace powers at T.C.A. § 8-8-213 to "suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace" (Doc. 1, PageID # 3, 7).

SAFETY'S UNDIVIDED REGULATORY ROLE

DOSHS has sole authority over regulating licenses and equipment. "The department of safety, by the authority vested in it by this part to license, supervise and regulate certain motor vehicles operating on the highways of Tennessee, shall periodically promulgate such safety rules and regulations *** to govern and control the safety operations and safe use of equipment" § 65-15-111(a). Vehicle inspections. The revenue commissioner administers chapters 1-6. T.C.A. § 55-1-111.

The DOSHS commissioner administers all other chapters of title 55. He oversees the highway patrol. T.C.A. § 4-3-2003; appoints officers "to conduct contested case hearings" under UAPA. T.C.A. § 4-3-2005; and will "exercise all duties, responsibilities and powers granted" to DOSHS "in title 65, chapter 15," and set rules "necessary for the administration and enforcement" of that chapter. In title 55, chapt. 9, he enforces light equipment regulations. As for driver licenses, chapt. 50, "This chapter shall be administered by the department of safety" T.C.A.§ 55-50-201. By law, all activity ("rules and regulation") conform with or come from the U.S. department of homeland security "for the purpose of ensuring the safety and welfare of the traveling public" T.C.A. § 55-50-202.

FACTS INCLUDE NOTICE

The court has duty to consider notice exhibits as part of plaintiff's fact base. Two notices broaden the "totality of circumstances" analysis of the arrest. Mr. Bennett acts within their

context, as he is agent of sheriff Garrett and agent of Hamilton County. Notice to principal is notice to the agent.

He knows, actually or constructively, about title 55 and economic regulation under DOSHS commissioner. He knows about T.C.A. § 40-7-103, warrantless arrest by officer, because the defendant sheriff knows about it and defendant county knows about it. In equity, notice is a two-way street between legal equals.

6. Legal background of appeal

Petitioner accounts for Tennessee privilege law, regulation of motor vehicles, the distinction between privilege taxable activity and private travel, controversies under motor vehicle regulation and the probable cause standard for criminal enforcement. This suit challenges the lower court's refusal to account for this coherent system of law.

A. Privilege is upon for-profit activity

ISSUE — Whether government grants, certificates or licenses can be reliably understood as requiring due process laid out by authorizing parties in law.

Complaint is premised on the legal fact that driving a motor vehicle is a privilege that has commerce as an essential element.

TAXABLE ACTIVITY

"The license tax is one imposed on the privilege of exercising certain businesses, callings, professions, or vocations. 17 R.C.L. 475, Sec. 2. It is not imposed on the ownership of the business, or a sale of it, or of the good-will incident to it, or an agreement not to exercise the privilege of doing it. 'The essential element of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuit, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself, or the mere ownership of it.' Phillips v. Lewis, 3 Shan.Cas. [230], 231". 10 Michie's Digest of Tenn.Reports, 2nd Ed. 522–523, Section 3. Draughon v. Fox-Pelletier Corp., 174 Tenn. 457, 126 S.W.2d 329, 333 (1939). "'Privileges are special rights, belonging to the individual or class, and not to the mass; properly, an exemption from some general burden, obligation or duty; a right

peculiar to some individual or body.' *Lonas v. State*, 50 Tenn. 287, 307" Jack Cole Co. v. MacFarland, 206 Tenn. 694, 337 S.W.2d 453

"To operate a motor vehicle on the public highways of this state..... is wholly separate from the right to travel. 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" (citations omitted) State v. Booher, 978 S.W.2d 953, 957 (Tenn.Crim.App.1997). "It is well settled that '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, No. M2007-01306-CCA-R3-CD (Tenn.Crim.App. 08/07/2009). "It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege. ....'A privilege is whatever **business, pursuit, occupation, or vocation**, affecting the public, the Legislature chooses to declare and tax as such'" Corn et al. v. Fort, 170 Tenn. 377, 385, 95 S.W.2d 620, 623, 106 A.L.R. 647 (emphasis added).

'BUSINESS, PURSUIT, OCCUPATION, VOCATION'

The privilege is not upon property, but taxable activity of carrying goods for hire. "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, 299 S.W. 792, 156 Tenn. 1, 4 (Tenn. 1927).

"151. 'Privilege' is defined.— A privilege is the exercise of an occupation or business which requires a license from some properly constituted authority, designated by general law and not open to all or any one without such license. Mabry v. Tarver, 1 Hum., 94, 98. *** A privilege is whatever business, pursuit, occupation, or vocation, affecting the public, the legislature chooses to declare and tax as such. Mabry v. Tarver etc." *Constitution of the State of Tennessee Annotated,* Robert T. Shannon, 1916, pp. 214, 215.

Appendix in the complaint, and in this petition, explains privilege from the leading case Phillips v. Lewis, Shannon's Code, Vol. III 230, 240 (1877).

> "Merchants, peddlers and privileges" are the defined objects of taxation in the latter clause of the section. **It is certain the merchant is not taxed except by reason of his occupation, and in order to follow or pursue**

> **this occupation – one of profit** – in which it may be generally assumed capital, skill, labor, and talent are the elements of success, and are called into play by its pursuit. This pursuit or occupation **is taxed, not as property, but as an occupation.**."

(Doc. 1, PageID # 40, emphasis in original) also **APPENDIX EX. No. 2**

The motor vehicle driving privilege, like all others, is obtained by application. "Every person applying for an original or renewal driver license shall be required to comply with and be issued a classified driver license meeting the following requirements ***." T.C.A. § 55-50-301. The motor vehicle law applies upon privilege recipients.

Appellant is free in enjoyment of his constitutionally protected property, religion or press rights to use the road for pleasure and private purpose apart from privilege. Truck drivers describe using the road but not participating in privilege taxable activity (private profit and gain) as "dead-heading." That's what appellant was doing the hour of his seizure.

TROOPERS' UNIQUE POWERS

Appellant's streetside demands for evidence of commerce constituting privilege taxable activity is based on awareness of the duty given to DOSHS officers to obtain evidence of commerce in regulating the privilege. The department administers the motor carrier statute, T.C.A. § 4-3-2012. Its troopers "patrol the state's highways and enforce all laws, and all rules and regulations of the [U.S.] department of transportation regulating traffic on and the use of those highways" and "assist *** in the collection of all taxes and revenue." T.C.A. § 4-7-104.

They probe "operators of motor vehicles for hire as they may see fit" to see if the operator is compliant with title 65, chapter 15 T.C.A. § 4-7-105. "This part is necessary to: (1) protect the lives and safety of the traveling public on state highways; (2) conserve and preserve the state's property" T.C.A. § 4-7-113. The carrier statute recognizes distinction between privileged and non-privileged travel, the law directing troopers to "[p]rotect the welfare and safety of the ***traveling and shipping public*** in their use of the highways, and in their contact with the agencies of motor transportation and allied occupations" T.C.A. § 65-15-101 (emphasis added).

A trooper is authorized to demand exhibiting of a driver license without probable cause. T.C.A. § 40-7-103(c).[3] [4] A party exercising the motor vehicle privilege has pre-agreed to supervision as a condition of obtaining the commercial privilege with no probable cause.

Defendants criminally charged appellant under the "display on demand" statute T.C.A. § 55-50-351 applicable to a person "operating a motor vehicle." "Every licensee shall have the licensee's license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of any officer or agent of the department or any police officer of the state, county or municipality * * *. " In the Williams Tennessee code annotated 1947, § 2715.21, this authority was exclusively upon "officers of the department," the state trooper. It was amended to allow municipal officers to impose license inspection authority on motor vehicle operators. **APPENDIX EX. No. 16** (see p. 18). "1 Section 8 of Chapter 90 of the Public Acts of 1937 requires that every operator of a motor vehicle shall have in his possession his driver's license while so operating his vehicle and shall exhibit it upon demand of any State Highway Patrolman. This unrestricted right to demand an exhibition of a license is confined to State Highway Patrolmen. Under this provision these Patrolmen are empowered under the law at any time to stop a car and require an exhibition of the driver's license." Cox v. State, 181 Tenn. 344, 347, 181 S.W.2d 338, 339 (1944). [5]

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[3] The courts warn against easy misuse of this power. "Without regard, however, to the right of the Highway Patrol Officers to check on the licenses of drivers of foreign licensed cars, the officers must exercise this right to check operators' licenses in good faith and not as a pretext or subterfuge for an inspection of or a prying into the contents of an automobile or any other possession of a citizen."

Robertson v. State, 184 Tenn. 277, 198 S.W.2d 633, 635 (1947)

[4] Unless a law enforcement officer has **probable cause** to believe that an offense has been committed, ***no 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.

T.C.A. § 40-7-103(c) (emphasis added)

[5] Tennessee supreme court justice Neil adds in a concurring comment, "The exceptional authority conferred upon Highway Patrolmen was due to the fact that their **chief duty was to enforce the traffic laws and ordinances in order to promote the safety of the traveling public**. The statutes certainly did not contemplate conferring this authority upon them to enable them to circumvent the constitutional provision against searches of the person and property of a citizen without a valid search warrant. If this conviction should be sustained, every Highway Patrolman in the State would at once construe it to mean that he had full authority to search an

Mr. Bennett acts upon the auto taillight owner with no evidence or allegation of evil intent or criminal act, T.C.A. § 39-11-301; without evidence of public disturbance, riot or affray, T.C.A. § 40-7-103; and without a crime victim's sworn complaint before a magistrate, T.C.A. § 40-6-203.

REASON, MORALITY IN REGULATION

For the general assembly not to regulate and tax commercial use would constitute a taking against the public for the benefit of private business. "The property of the public *can no more be taken and appropriated to the use, benefit, and profit of private enterprises, without due process of law and fair compensation, than the property of a private enterprise can be taken by the public without due process of law* and fair compensation. Reasonable regulation of transportation companies, operating over public highways, is no more nor less than a valid and reasonable protection against the appropriation of public property by private individuals without due process of law and without compensation" Ex parte Tindall, 1924 OK 669, 50, 102 Okla. 192, 229 P. 125, 132, 133 (emphasis added).

HIGHWAYS' TOP USE: 'PRIVATE PURPOSES'

"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). "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).

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automobile anywhere and at any time without a search warrant. Such a holding would abrogate the constitutional inhibition against unlawful searches and seizures insofar as it applies to Highway Patrolmen. In order for a search to be lawful, when the Patrolman stops a car to examine a driver's license, it should be made to appear that the examination is made in good faith and not as a mere blind or an excuse for a failure to procure a valid search warrant."

Id. Cox at 348 (emphasis added)

Troopers, whom the commissioner tells the U.S. department of transportation have "sole agency in the state of Tennessee" to administer the transportation law, protect the general public with monitoring of business operators in trucks, tractors and trailers. [6]

DOSHS REGULATES FOR-HIRE USE

A trooper's duty is to "protect the lives and safety of the *traveling public* on state highways" T.C.A. § 4-7-113 (emphasis added). In regulating transportation and for-hire use of the roads, the safety commissioner "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.

Highway patrol officers "have authority to make arrest for any violation of title 65, chapter 15, or of any other traffic law of the state" T.C.A. § 4–7-105. DOSHS Criminal enforcement authority is limited. (1) "unlawful taking of a motor vehicle" T.C.A. § 4-7-114 (2) fraud in registration applications, title 55, chapter 5 and (3) theft of property. T.C.A. § 39-14-103.

EVIDENCE OF PRIVILEGE: BILLS, INVOICES

Statute defines evidence of commerce subject to privilege requirement. "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 trooper 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

6 "The Tennessee Highway Patrol of the Tennessee Department of Safety and Homeland Security (TDOSHS) is the **sole agency in the State of Tennessee** responsible for enforcing laws related to size, weight, and safety regulations for commercial motor vehicles. The Tennessee Highway Patrol is the State's lead agency for the Motor Carrier Safety Assistance Program and does not fund any sub-grantees." TENNESSEE Commercial Vehicle Safety Plan Federal Motor Carrier Safety Administration's Motor Carrier Safety Assistance Program Fiscal Years 2022 - 2024 Annual Update FY 2024 Date of Approval: July 30, 2024 (emphasis added) https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-11/Tennessee%20FY2024%20Final%20CVSP.pdf

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 (emphasis added).

DEFENDANTS NOT TRAINED TO ADMINISTER TITLE 55

Such evidences Hamilton County has not trained Messrs. Bennett and Garrett to search for. Defendant county ordains they enforce or administer the motor vehicle laws using criminal authority illicitly.

Bills and invoices, passenger lists, manifests and the like are the requisite evidences of privilege taxable activity for which carrier and motor vehicle titles exist, which law is Mr. Bennett's pretext for arresting appellant. Defendants are not qualified to administer the police powers applicable to economic regulation. In this typical "traffic stop," they sought ***no evidence*** of privilege to give them standing to sue and to back allegations of wrongdoing.

B. Since 1905, rules regulate driving privilege

ISSUE — Copies of early law secure meaning of current law, showing legislative/congressional intent and evolution, are not available to the court.

The legislative and regulatory history of Tennessee law, as shown in Appendix exhibits 1–16, confirms that since 1905 the operation of motor vehicles has been treated as a taxable privilege **only when exercised for gain or in commerce**. These statutes consistently distinguish between public rights of travel and **regulated activities requiring licensure**. This distinction remains embedded in current law, which continues to define enforcement of such privileges as administrative in nature. Appellant's arrest bypassed this statutory structure, imposing criminal consequences where the law prescribes notice, hearing, and exhaustion of administrative remedy.

In 1905 the Tennessee general assembly passed S.B. 246 "[t]hat before any owner of any automobile *** used for the purpose of transporting or conveying persons or freight, or for any other purpose *** shall be permitted to operate or permit to be operated any automobile upon any street *** such owner shall register such automobile with the Secretary of State[.]" [7] An official number" not less than three inches in height" marks the licensee's automobile front and

[7] https://archive.org/details/actsstatetennes23tenngoog/page/370/mode/2up

rear. The law declares "no automobile" shall "be run or driven" in excess of 20 mph, and that anyone controlling a car must slow down when approaching a horse and "make known his approach" by "ringing a bell or sounding a horn." Sect. 5 of the law says a "willful violation" is a misdemeanor with a fine between $100 and $500 ($1,816 to $9,080 in current dollars) and jail time for "the person, firm or principal agent of any corporation so offending, with full authority for a criminal court jury. [8] **APPENDIX EX No. 3**

In 1911 a general assembly's private act let Sullivan County require registration of autos used for any transportation-related purpose. **APPENDIX EX No. 4**

Very simply, Shannon's 1917 code lists annual fees "for each automobile or rent or hire" at $10, with "sight-seeing car or truck with capacity of 12 people paying $15. The heading is "Automobiles for hire or rent" Shannon's Compilation of Tennessee Statutes Vol. 1 p. 436 § 712. Chapter 34 is titled, "Self-propelling public conveyances other than street railways for street transportation are common carriers whose business is regulated as a privilege," citing 1915 ch. 6 sec. 1. **APPENDIX EX No. 5**

TURNPIKE NOT, BUT PUBLIC HIGHWAY FREE

Constitutionality of a 1915 private act on privilege for Davidson County "is doubted" for "this tax purports to be a privilege tax imposed upon the mere use of an automobile *** for pleasure. A privilege tax cannot be imposed on anything or any act, unless it constitutes a business, occupation, pursuit, or vocation. Pleasure-taking does not constitute a business, occupation, pursuit, or vocation *** ; and, therefore, is not subject to privilege taxation."

> Can the legislature impose a privilege tax upon the mere taking of pleasure by the people, which is the exercise of an inalienable right, so long as it does not interfere with the rights of others? The taking of pleasure is of great benefit to humanity, and often a powerful agency for the restoration of health, as well as for the preservation of health.

Shannon's Vol. 1 p. 438 § 712

The state supreme court, however, turned this argument aside as to turnpikes but not as to public roads. "[T]he legislature may declare it to be a privilege to operate pleasure cars over the turnpike road of our counties. Such operation amounts indeed to the pursuit of an occupation

[8] Figures from bureau of labor statistics "CPI Inflation Calculator," https://www.bls.gov/data/inflation_calculator.htm?pubDate=20250610

with many, though not for gain" Ogilvie v. Hailey, 141 Tenn. 392 (1919). Pleasure use on a turnpike is commerce because the traveler must pay a business to cross onto the road. **APPENDIX EX No. 5**

"This idea of a turnpike arrived with the early settlers from England where toll gates were constructed with long spears or pikes directed toward the vehicles. When the toll was paid, the gate turned parallel to the road allowing the vehicle or animal to pass. From this device came the name 'turnpike' which, almost immediately, became to mean a road on which tollgate or turnpikes were erected" (History p. 9).[9]

REGISTRATION ALWAYS ON 'OPERATION'

Shannon's 1917 record in Vol. II, chapter 33, at 307a186, p. 2151, covers 'Registration of automobiles and the regulation of their operation." It begins, "Before the owner of any automobile, motorcycle, auto truck, traction engine, or other vehicle of like character, used for the purpose of conveying persons or freight or for any other purpose *** shall **operate** or permit to be **operated** upon any street, road, highway, or other public thoroughfare, or elsewhere in Tennessee, such owner shall register such vehicle with the secretary of state" giving details of horsepower, make, owner ID and pay fees on a sliding scale based on "passenger seating capacity" (emphasis added). The statutory construction rule of reading in law *ejusdem generis* requires the phrase "for any other purpose" be seen as constrained by the narrow context already set in the law, referring to other for-hire use, not pleasure, or "taking of pleasure" auto use. **APPENDIX EX. No. 6.** Chapter 24 in 1917 Shannon's code deals with any person or business "operating for hire any public conveyance *** affording a means of street transportation" similar to that of a railway, but not on fixed tracks. Such business is under bond, permit and/or license. The 1918 code shows tax rates for autos for hire or rent. **APPENDIX EX. No. 7**

FIRST AUTO, NOW VEHICLE IN FOR-HIRE USE

In the 1918 Shannon's code, sold for-hire automobiles "receive a transfer certificate" from the secretary of state, and the buyer "shall "register such certificate with the court clerk of the county" and pay 50 cent fee. An early indictment under the penalty provision at 3079a193 (p. 2153) was for a motorcycle "operated" ("used for the purpose of conveying persons or freight")

[9] History of the Tennessee Highway Department (Nashville: 1959) compiled by the Tennessee state highway department, highway planning survey division in cooperation with the U.S. department of commerce, bureau of public roads

without having been registered. Metal plates are detailed at 3079a188. The owner or operator "of a motor vehicle" files annually a report to the secretary of state and pays fees based on vehicle "passenger seating capacity" (1914, ch.8, sec. 5). 3079a190. Auto dealers are regulated and must notify the state "of said sale, giving the name of purchaser, make and horsepower of the machine."

Presumptive authority over noncommercial users appears to arise out of safety concerns for horses on the road and the 20 mph for all users. "No automobile shall be run or driven *** at a rate of speed in excess of twenty milers per hour." A "person driving such automobile" shall stop the car until the horse passes. 3079a196. **APPENDIX EX. No. 8**

Toll roads were unpopular. Most went bankrupt (History p. 13). Public roads, for which the people clamored, are useable at liberty by all per right. Regulation and taxation from the beginning applied to business or commerce in which the private living or gain is on the road.

The general assembly ("GA") passed for Hamilton County a single private act relating to motor vehicles, according to County Technical Assistance Service run by University of Tennessee. The 1921 private acts chapt. 566 requires "all owners or operators of 'for hire' vehicles propelled by steam, gasoline or electric power and used for the purpose of conveying passengers, goods, wares or merchandise, shall cause to have painted on both sides of their vehicle or vehicles offered for public hire, in letters not less than one and one-half inches (1½) inches [sic] high, in such manner as to be plainly visible, the name or monogram or trade mark of the individual, firm, corporation or association owning or operating such vehicle or vehicles." (sect. 1). Further, "it shall be unlawful for any vehicle propelled by steam, gasoline or electric power to carry for public hire any passengers, goods, wares or merchandise unless such owner or operator shall first give bond or security as hereinafter conditioned and specified" (sect. 2). Local police and deputies enforced the law.[10] **APPENDIX EX. No. 9**

The GA in 1925 passed the Hamilton County private act chap. 729 for taxi cabs, "hereby declared to be common carriers" and liable in sect. 3 to carry bond or insurance. The activity

[10] https://www.ctas.tennessee.edu/node/102710/printable/pdf

regulated is "operating" a "motor vehicle" in either freight or passenger service.[11] **APPENDIX EX. No. 10**

COMMERCE USERS TAXED TO PAY ROADS

Commerce in Tennessee history pays fees and taxes for road upkeep. Gov. Andrew Johnson's maxim in 1853 on highway finance was "He who derives the greatest benefit shall pay correspondingly for the benefits received" (History p. 34). A law "requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the business" of selling fuel had to pay a privilege tax of 2 cents per gallon "used solely in the construction and maintenance of a highway system in the state." In 1918 the cost of wagon hauling per ton mile for wheat was 30 cents, but 15 cents on hard surface road by truck in public benefit (History p. 34).

CARRIERS TAXED AS UTILITIES

Trucking, hauling and transportation are regulated as utilities. In 1932 the code, Vol. 1, shows privilege operations generally in Article VI, requires registration of vehicles used for "conveying persons or freight" at § 1149. **APPENDIX EX. No. 11.**

The 1932 code, Vol. 2, on utilities, duties as to railroad passengers in art. 3, tickets, separating blacks in art. 5, and whites, jitneys "operating for hire" as "public conveyance" under privilege in art. 6. It follows with privilege regulation of barbers, embalmers and plumbers. **APPENDIX EX. No. 12** The 1934 Annotated Code of Tennessee, Vol. 4, Article IA "motor carriers" shows large scale supervision of motor vehicles use in fleets. **APPENDIX EX. No. 13**

The highway patrol (Acts 1929 (E.S.) ch.25, § 1), department of safety (Acts 1937, ch. 33) and the UAPA (Acts 1974, ch. 725) centralized state control over the transportation privilege.

THROWN OPEN FOR PUBLIC TRAVEL OR USE FREE OF CHARGE

"That a highway declared to be public by statute is used chiefly by a private individual does not make it a private highway, where the whole public has the right to use it." Bashor v. Bowman, 133 Tenn. 269, 180 S.W. 326, 1915 Tenn. LEXIS 92 (1915) (Westlaw headnote). "We

[11] https://www.ctas.tennessee.edu/node/97477/printable/pdf

are of opinion that there is no ambiguity about the ordinary meaning of the expression 'public highway.' We think there can be no doubt that the common understanding of a public highway is such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same" Standard Life Ins. Co. v. Hughes, 203 Tenn. 636, 642, 315 S.W.2d 239, 1958 Tenn. LEXIS 229 (1958). (Doc. 1, PageID # 73, administrative notice)

"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. It is within the power of the Commission, in proper cases, to permit several motor carriers to operate over the same route. No one carrier, by virtue of a certificate, obtains a monopoly over the route granted." Dunlap v. Dixie Greyhound Lines, 178 Tenn. 532, 160 S.W.2d 413, 418 (1942) (emphasis added). "All roads, streets, alleys, and promenades where legally **dedicated and thrown open for public travel or use free of charge** shall be exempt from taxation" Tenn. Code Ann. § 67-5-204 (emphasis added).

REGULATIONS AT LIMIT ADMIT FREEDOMS

State law recognizes ingress-egress rights of the general public to use the public right of way apart from privilege, as noted in the exceptions law on registration. "(a) Every motor vehicle or motorized bicycle, as defined in chapter 8 of this title, and every trailer, semitrailer, and pole trailer, when driven or moved upon a highway, and every mobile home or house trailer, when occupied, shall be subject to the registration and certificate of title provisions of chapters 1-6 of this title, except: (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; **(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" or vehicle owned by the U.S. government or in a foreign state. T.C.A. § 55-3-101 (emphasis added) [12]

[12] Farm tractor or combine crossing a road from one field to another is exempted in (3) as "implement of husbandry." Exception (2) refers to movement by right upon the way thrown open

EVERY DRIVER LICENSE COMMERCIAL

The driving privilege formerly was under the "uniform motor vehicle operators' and chauffeurs' licenses law" (Acts. 1937, ch. 90, § 1) in title 50, was amended as become the "uniform classified and commercial driver license act of 1988" under the administration of the U.S. department of transportation ("administrator" defined, § 55-50-102). According to the familiar conjunctive/disjunctive canon in the rules of statutory construction (see *Reading Law The Interpretation of Legal Texts* by Antonin Scalia & Bryan A. Garner, 2012), the word "and" indicates a driver license is classified ***AND*** commercial. Appellant, whose occupation is radio journalist, has a second occupation. This one under privilege with a driver license, that being "driver and operator of a motor vehicle," with a Class D driver license up to 13 tons motor vehicle weight.

C. Motor vehicle regulation federal

ISSUE — Federal supremacy over regulation of interstate commerce cannot be controverted without creating a fundamental error.

Motor vehicle is a federal term since at least 1935. "(13) The term motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails." Motor Carrier Act. 1935 (Feb. 4, 1887, c. 104, Part II, § 201, as added Aug. 9, 1935, c. 498, § 1, 49 Stat. 543.) [13] **APPENDIX EX. No. 14**

Congress defines vehicle in terms of transportation privilege "'VEHICLE' AS INCLUDING ALL MEANS OF LAND TRANSPORTATION[.] § 4. The word 'vehicle'

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to the public by those T.C.A. 4-7-113 refers to as "the traveling public." See appellant administrative notice on ingress-egress rights connected with his rights to abode and land. Doc. 29 PageID # 306. "Since 1905 under the holding in *Frazier v. East Tennessee Tel. Co.*, 115 Tenn. 416, 90 S.W. 620, 3 L.R.A.,N.S., 323, Tennessee has been committed to the view that the use of public rights-of-way by utilities for locating their facilities is a proper highway use subject to their principal purpose as travel and transportation of persons and property." Pack v. Southern Bell Tel. & Tel. Co., 19 McCanless 503, 511 (1965). Note reference to "The traveling public using said highways" Dunlap v. Dixie Greyhound Lines, 14 Beeler 532, 416(1942)

[13] https://tile.loc.gov/storage-services/service/ll/uscode/uscode1934-00204/uscode1934-002049008/uscode1934-002049008.pdf

includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land." 61 Stat. 633 Act of July 30, 1947. **APPENDIX EX. No. 15** Transportation is "the removal of goods or persons from one place to another, by a carrier." A carrier is an "individual or organization engaged in transporting passengers or goods for hire." *Black's Law Dictionary* 6th ed.

Motor vehicle regulation is federal, from granting license to every facet of its use, from issuance through suspension to revocation. "[T]he department shall abide by all federal rules and regulations relative to the issuance, suspension, and revocation of driver licenses and qualification of drivers." T.C.A. § 55-50-50.

State motor vehicle regulation recognizes under the supremacy clause of the U.S. constitution and federal regulation of interstate commerce. (See **EXHIBIT No. 2**, Doc. 1, PageID # 66, 67). The commissioner of safety claims claims Tennessee is compliant with federal regulation and definitions (Doc. 1, PageID # 9). DOSHS regulates motor vehicles under the secretary of the U.S. department of transportation. T.C.A. § 65-15-101. In regulating the use of "every way publicly maintained that is open to the use of the public for purposes of vehicular travel," department of safety "shall abide by all federal rules and regulations relative to the issuance, suspension, and revocation of driver licenses and qualification of drivers" T.C.A. § 55-50-504.

"The engaging in any vocation, profession, business or occupation named in this part is declared to be a privilege taxable by the state alone. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited into the state general fund, except as otherwise provided for in this part. "The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license *** " T.C.A. § 67-4-101.

Vocations subject to tax are as follows; lobbyists; agents; broker-dealers; investment advisers; accountants; architects; brokers; engineers; and landscape architects. audiologists; chiropractors; dentists; optometrists; osteopathic physicians; pharmacists; physicians; podiatrists; psychologists; speech pathologists; veterinarians; attorneys; and athlete agents. T.C.A. § 67-4-1702. Occupations subject to tax.

D. Notice in reasonableness, totality of circumstances analysis

Court pretermission of material facts regarding defendant state of mind in "totality of circumstances" analysis following notice is prejudicial.

"To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to' probable cause." Maryland v. Pringle, 540 U.S. 366, 371, 124 S. Ct. 795, 800, 157 L. Ed. 2d 769 (2003).

Appellant served the following notices on defendants:

- **March 1, 2018**: Administrative notice to Sheriff Jim Hammond on the limits of state police power under Title 55 and 65.
- **April 15, 2020**: Notice to Hamilton County Commission detailing the "public offense" standard for warrantless arrests under T.C.A. § 40-7-103.
- **Nov. 22, 2023 (during arrest)**: On-scene oral notice to Mr. Bennett rebutting any presumption of privilege-taxable activity and demanding legal basis for enforcement action.

Appellant administrative notices in Exhibit Nos. 1 and 2 enlarge the totality of circumstances the court be required to examine, making defendants aware of the nature of their misuse of criminal police authority in administering privilege taxable activity by one they presume to be in a motor vehicle.

"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, 724 (E.D. Mich. 2013). As the Tennessee Supreme Court held, "it was unnecessary for the [plaintiff] to have been aware that there had been a breach of the appropriate legal standard in order to be deemed to have discovered [her] right of action." *Id.* at 533. Rather, she "needed only to be aware of facts sufficient to put [her] on notice that an injury had been sustained as a result of [the attorney's] advice" *Id.* Humphreys v. Argabrite, 162 F. App'x 544, 547 (6th Cir. 2006). Details on doctrines of notice are Doc. 28, PageID # 28.

Without stating grounds, the court refuses to account for the case's totality of fact circumstances – starting with administrative notice and acquiescence. These facts require the court to admit defendants knew, either actually or putatively, that driving a motor vehicle is privilege taxable activity handled administratively under commercial regulation police power.

Complaint says appellant served "Tennessee transportation administrative notice" upon defendants March 1, 2018, to assist them in lawful public service. The arrest is without probable cause because the deputy knew – or was obligated by law and notice to be on awares – that a damaged taillight on the back of appellant's car under privilege is not a crime, and requires action by DOSHS, that HCSO is not co-administrator with DOSHS of the title 55 regulations and is not statutorily empowered to enforce transportation regulation as if every breach were a crime. **EXHIBIT No. 2** (Doc. 1 PageID #26).

It's not amenable criminally in instant case because, as the dialogue streetside shows, Mr. Bennett tosses aside his *casus belli* in making the arrest. That is, of commerce and purported criminal enforcement of privilege law. He invokes title 55 as his authority, binding his person and his acts to that law.

He states three times that appellant is not involved in privilege taxable activity under title 55. "The administrative notice outlines the nature of transportation regulation and spotlights the line separating regulatory authority over one sector of the traveling public from that other sector of the traveling public upon which no authority is exercisable except for cause or under criminal warrant" (Doc. 1 PageID # 23). That would have been his administrative enforcement authority, if he had it to begin with.

E. Privilege central to complaint

ISSUE — Economic regulation arises from lawfully constituted authority under the state and federal constitutions codified by statute, and appeal to such regulation is reasonable when allegation of wrongdoing is made in terms of that regulation.

Privilege is the basis of the rights the complaint defends. This cause represents the truism "driving a motor vehicle is a privilege." A damaged taillight is a misdemeanor, as defendants criminal filings alleged, but before it's a criminal offense appellant has right to a hearing according to the law — prejudicially denied by the court. T.C.A. § 55-10-201.

Privilege is controlling law in Tennessee, its administrative regime by state commissioners used in the other 49 states. Privilege is one of two tax powers granted the state in Tenn. Const. Art. 2 sect. 28. Privilege is an economic activity, for profit, that affects the public interest. *Id.* Phillips v. Lewis (Doc. 1 PageID# 39).

Privilege taxable activity has long been described in its largest scale use.

> 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.
>
> The statute under consideration is a comprehensive regulation *** to protect the **safety of the traveling public**, and to protect the property of the state in the highways from unreasonable, improper, or excessive use.

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

Complaint makes clear assertion of this right. "Defendants *** abrogate the uniform administrative procedures act *** which law regulates accusations and controversies arising from the for-hire or commercial use of the public roadways, which body of law is civil in operation, and not criminal, defendants pre-empting operation of that law in exercise of police powers and physical violence *ultra vires*" (Doc. 1, PageID # 3,¶7). The taillight damage is under title 55, and "[A]ll actions by state of Tennessee subject to UAPA at T.C.A. § Title 4-5-101 *et seq*, and subject to accused's right in defense to force state claim movants to exhaust their administrative remedies prior to seeking redress in criminal court" (Doc.1, PageID # 12,¶ 38). Appellant reports, Doc. 1, PageID # 15, his criminal proceedings, "Accused insists on his right that movant state exhaust its administrative remedies," with its refusal to do so termed official oppression and "arbitrary and capricious policy" because the parties acted "intentionally or knowingly" in misconduct (Doc. 1, Page ID# 20). **APPENDIX EX. No. 2**

Driving or operating a motor vehicle is an occupational privilege, no different than plumbing, running a scrap metal yard or embalming the dead. Driving a motor vehicle is a privilege universally obtained and enjoyed in Tennessee, it being the most popular and coveted occupational privilege foundational to exercise of many other privileges and of most all rights. Everyone, virtually every adult, applies for the privilege by application and payment of fees, all under federal auspices.

F. Privilege penalty provisions

ISSUE — If a damaged taillight is a misdemeanor, and failure to exhibit license on demand of a highway patrol officer is a misdemeanor, court ignores facts of notice, enlargement of sphere of "totality of circumstances.

"Bennett told Plaintiff that he was in violation of a traffic law and, therefore, he was requesting plaintiff's license," the court recounts. "Plaintiff responded, 'do you believe that I'm operating in commerce right now[,] sir? *** Bennett told Plaintiff, 'I'm not going to get into all that with you. You're driving a motor vehicle on a state roadway, so I am going to ask for your license" (Doc. 37, PageID ## 329, 330).

The deputy's purported factual observations ("driving a motor vehicle") are conclusory statements constituting allegation of "violation of a traffic law." But he says he is "not *** going to get into all that with you." Mr. Bennett is unwilling to cite his authority under title 55, if any, or begin an investigation into whether his victim has contracts, bills or invoice that would constitute written evidence of commerce. He's unwilling to explain grounds for exercise **criminal** authority.

The state is jealous of the motor vehicle privilege. Prosecution of a breach under privilege taxable activity under commissioner of safety at T.C.A. § 4-3-2005 is called a contested case regarding driver license, registration or use of the road. **"**The commissioner of safety, in the commissioner's discretion, is hereby authorized to appoint or designate hearing officers to conduct contested case hearings under the Uniform Administrative Procedures Act, compiled in chapter 5 of this title." T.C.A.§ 4-3-2005. Hearing offices — review of initial orders. Further, "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.

Complaint sufficiently brings facts and legal argument to show that appellant has right to a trial by jury as to damages he suffered being falsely arrested and imprisoned while on protectible press business recognized in Tenn. Const. art 1 § 19 and U.S. Const. Amend. 1. Defendants knew under notice he was on the road apart from privilege regulation. They knew under notice he had no *mens rea* to commit a crime involving a taillight. Notice showed him to believe that a damaged property such as missing plastic on a taillight is not a crime, but potentially actionable by DOSHS under UAPA.

Notice shows appellant lacked *scienter* for any criminal act upon which defendants based "probable cause" or "reasonableness" in arresting him under criminal authority recognized as theirs in T.C.A. § 8-8-213, the sheriff's duties law. They knew under notice that if they were going to arrest him for a misdemeanor crime, the deputy had to have an arrest warrant in hand or evidence he had committed a crime or was about to commit a crime. They knew driving a motor vehicle is a privilege the terms of which are enforceable under UAPA.

7. Argument

SUMMARY The use of criminal police power — including seizure of the person and initiation of criminal proceedings — is suitable only where the alleged conduct constitutes a crime under statutory or common law. A broken taillight, while a regulatory defect in a licensed occupation, constitutes at most a civil infraction or administrative breach. It does not create a public offense and thus does not justify invocation of criminal police power limited under T.C.A. § 40-7-103 or under the Fourth Amendment.

The complaint is premised on the truism that "driving or operating a motor vehicle is a privilege," or an agreement in equity between the state and a citizen, with due process afforded the citizen under the rules governing each state-owned occupation. That is, under UAPA and the obligation of the movant to exhaust administrative remedies if aggrieved.

Appellant accepts defendants' own premise: that operating a motor vehicle is a regulated privilege. Accordingly, enforcement must comply with administrative process, including notice and opportunity for hearing under the UAPA. Defendants instead invoked criminal power

without exhaustion of administrative remedies, **converting a regulatory infraction into an unlawful seizure.**

Complaint establishes it is improper to use criminal, peacekeeping, conservator of the peace authority to arrest appellant under authority of the sheriff law. "The sheriff and the sheriff's deputies are **conservators of the peace**, and it is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other **breaches of the peace**, detect and prevent **crime**, arrest any person lawfully, execute process of law, and patrol the roads of the county" T.C.A. § 8-8-213 Powers as conservator of the peace

I. THE NATURE OF TITLE 55: ADMINISTRATIVE, NOT CRIMINAL

Controversies over activities under license 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). "[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). The commissioner of safety is charged with overseeing grant, suspension or revocation of driver licenses. T.C.A. §§ 55-50-202 and -502

Hamilton County sheriff's office records show no evidence of authority to administer titles 55 or 65, chapter 15, by way of agreement, delegation, covenant, contract or order (Doc. 1 PageID 26 96). It prosecutes appellant in the name of the state.

II. THE EXHAUSTION DOCTRINE IN TENNESSEE AND FEDERAL LAW

Enforcement of motor vehicle regulation — by defendants' own theory a matter of privilege — is administrative, and must originate DOSHS, not roadside with cuffs and criminal process.

Both Tennessee and federal courts have long held that judicial relief is premature where the state or a party has not first pursued its administrative remedy. McKart v. United States, 395 U.S. 185 (1969) ("that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted") and Mathews v. Eldridge, 424 U.S. 319 (1976) (evidentiary hearing prior to final order in terminating benefits "would entail

fiscal and administrative burdens out of proportion to any countervailing benefits"). The doctrine of exhaustion on discretion prevents a party from "leaping prematurely to a judicial venue" Portela-Gonzalez v. Sec'y of the Navy, 109 F.3d 74, 80 (1st Cir. 1997) ("Insisting on exhaustion forces parties to take administrative proceedings seriously, allows administrative agencies an opportunity to correct their own errors, and potentially avoids the need for judicial involvement altogether. Furthermore, disregarding available administrative processes thrusts parties prematurely into overcrowded courts and weakens an agency's effectiveness by encouraging end-runs around it" *Id.* at 79.

"Both courts and legislatures have recognized that the exhaustion doctrine promotes judicial efficiency and protects administrative authority[.]" Colonial Pipeline Co. v. Morgan, 263 S.W.3d 827, 838 (Tenn. 2008). "When a statute provides for an administrative remedy, an aggrieved party must ordinarily exhaust the remedy before seeking to utilize the judicial process. Thomas v. State Bd. of Equalization, 940 S.W.2d 563, 566 (Tenn. 1997); Bracey v. Woods, 571 S.W.2d 828, 829 (Tenn. 1978)." Ready Mix, USA, LLC v. Jefferson County, Tennessee 380 S.W.3d 52, 63, 64.

Speaking from criminal jurisdiction, the court says the deputy justly arrests appellant; Mr. Bennett has probable cause, seeing appellant moving down the road behind the steering wheel of an automobile with a functioning but damaged taillight. But appellant acts to preserve his rights and rebuts the *prima facie* evidence of commerce (department of revenue registration tag on auto rear bumper). It is significant that the Hamilton County district attorney refuses to ratify Mr. Bennett's actions done against appellant (Doc. 1 PageID # 21ff).

A damaged taillight is a misdemeanor, the court says, ignoring privilege infrastructure and its powerful federal context, and Mr. Bennett's actions are no offense to U.S. Const. Amend. IV.

III. UAPA DUTY PRECEDES 4TH AMENDMENT

However, complaint claims defenses that ***precede*** U.S. Const. Amend. IV jurisprudence cited by the court. Defendants inject themselves into a DOSHS controversy. That dispute is not criminal. It is civil by privilege law's design, affording appellant due process protections in protocols laid out for a contested case in agency. T.C.A. § 4-5-301 *et seq*. His taillight dispute with state of Tennessee's department of safety is not ripe for criminal prosecution by defendants.

Until movant state exhausts its administrative remedies under title 55 for wrongdoing under rules for privilege taxable activity, defendants' policy and use of wristcuffs, jail and filing criminal charges with district attorney are a compensable tort.

IV. CASES OFF POINT

The exhaustion doctrine and the role of UAPA is waived by cases used to dismiss the complaint. The court's authorities are about enforcement of **criminal** authority in "a civil traffic violation." [14]

These cases are Atwater v. City of Lago Vista, 532 U.S. 318(2001), Virginia v. Moore, 553 U.S. 164 (2008), State v. Lozano, No. M201701250CCAR3CD, 2018 WL 4275919 (Tenn. Crim. App. Sept. 7, 2018), Crouch v. Elliott, No. 4:04-CV-96, 2005 WL 2122057 (E.D. Tenn. Sept. 1, 2005), State v. Williams, No. M2012-00242-CCA-R3CD, 2012 WL 4841547 (Tenn. Crim. App. Oct. 3, 2012), Barnhart v. Dilinger, No. 3:16-CV-2597, 2020 WL 7024670, at *1 (N.D. Ohio Nov. 30, 2020), State v. Williams, No. M2012-00242-CCA-R3CD, 2012 WL 4841547 (Tenn. Crim. App. Oct. 3, 2012) and *Id.* Booher. Parties in these cases waive the exhaustion of administrative remedies issue.

This case has other elements tending toward removal of tyranny and oppression. Its demands are supported by administrative notice informing defendants years ahead of time of this lawsuit and its twin demands for relief —from general warrants and criminal traffic cases, each pretermitted by the court despite the public interest

Two unrebutted administrative notices served prior to the arrest put defendants on awares about Tennessee transportation law at titles 55 and 65, chapt. 15, and their federal law integration shown above (also Doc. 1, pageID # 9, FN2). Had Mr. Bennett obeyed the law he swore to uphold, cited in **EXHIBIT No. 2,** administrative notice on arrest powers, he would have acted in a way to have avoided putting his personal estate in jeopardy by making an arrest for a non-public offense on his own authority. Mr. Bennet would've gone to a Hamilton County magistrate, drafted and sworn an arrest complaint for a crime committed by David Jonathan Tulis (or the unnamed white male driving a Toyota RAV4 with a given VIN and plate). The magistrate most certainly would have denied him an arrest warrant, would have clued him in that a damaged

[14] Whren v. United States, 517 U.S. 806, 808 (1996)

taillight is not a crime for which an arrest warrant shall issue despite sworn complaint. T.C.A. § 40-6-203. Examination of affiant.

Defendants traffic stop program short-circuits well-known protections for members of the public, and county employees in public service who face the onus of making false arrests in hopes no one will sue.

V. WELL KNOWN LAW — BUT NOT BY BENNETT *ET AL*

The court ignores the totality of factual circumstances that *defendants knew driving a motor vehicle is a privilege*. It ignores they knew by well-known and public law and by notice that titles 65, chapt. 15, and 55 regulate privilege taxable activity, knew by law and notice a damaged taillight is not a crime, and acted against him criminally in bad faith.

The court dismisses the complaint by rejecting privilege law, UAPA and federal hegemony over vehicle regulation cases that "foreclosed" appellant's case. "Plaintiff based his theory off how a federal statute defines 'motor vehicle' *** (See Doc 1, at 13 n. 3 (citing 18 U.S.C. § 31)). Plaintiff argues that his car is not a 'motor vehicle' unless he is using it for commercial purposes under this federal definition. In addition to not making logical sense, Plaintiff's theory is foreclosed by case law."

> Despite what Plaintiff may believe, his theory that he does not need a driver's license when traveling for personal reasons is not new or persuasive. It is frequently raised and just as frequently rejected. Tennessee courts have addressed this argument and found it "utterly without merit." *** Federal courts also frequently and summarily reject Plaintiff's theory.

Doc. 37 PageID ## 337, 338

Respectfully, defendants and the court aren't "making logical sense" to insist on title 55 as ground for criminal prosecution of appellant, then prejudicially ignore the entirety of a licensee's due process protections under that title in department of safety. Citing state and federal cases wherein the issues of this case are waived suggests the court is more keen on upholding judicial policy, even judicial fictions, than making Tennessee federally integrated transportation law work. Its statements smack of judicial impressionism, broad strokes without detail. In this policy, *all automobile use is regulable, under title 55, but don't bring up title 55 commerce and or insist that noncommerce must exist; no one is free (any more) to use the public road apart from general warrants and commercial regulation by presumption.*

DOSHS has authority over motor vehicle privilege. Department of revenue regulates registration of motor vehicle. T.C.A. § 55-4-101. [15] Defendants' arrest authority for alleged misdemeanor crimes is limited under U.S. Const. Amend. IV, Tenn. Const. Art 1 § 7 and under T.C.A. § 40-7-103, warrantless arrest by officer.

VI. IF EXHAUSTION, UAPA WAIVED, NO CONFLICT WITH CASES

This case challenges the presumption not challenged in other actions, that criminal enforcement authority is premature when clear, well-known law on privilege taxable activity requires movant state to exhaust its administrative remedies before petitioning for adjudication from a court in the state's judicial department. Appellant's arrest was without warrant and was unreasonable statutory construction of privilege law in title 55 cited by the deputy and procedures for handling controversy thereunder.

The court refuses to consider appellant's extensive references to federal law (see Doc. 1, PageID # 9). U.S.C. 49, transportation, is echoed by federal criminal law, which appellant also cites (18 U.S.C. § 31 definitions, "(6) Motor vehicle.--The term "motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.")

When read in *pari materia*, Atwater and Moore and state privilege law regulation are not necessarily in conflict. Appellant's claims about due process ***precede*** questions of legality of criminal prosecution. Other appellants waived the issues that make this case an apparent first.

VII. BOOHER CASE

In a footnote, the court says that Tennessee courts declare that automobile = motor vehicle, citing *Id.* Booher at 956 (Tenn. Crim. App. 1997), a prevailing authority. "Plaintiff was arrested for a violation of Tennessee law. Tennessee law defines the term 'motor vehicle' broadly and without any reference to commerce. See Tenn. Code Ann. § 55‑1‑103(c). Tennessee courts

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[15] **(1)** As a condition precedent to the operation of any motor vehicle upon the streets or highways of this state, the motor vehicle shall be registered as provided in this chapter. **(2)** The registration and the fees provided for registration shall constitute a **privilege tax upon** the **operation of motor vehicles**.

T.C.A. § 55-4-101 (emphasis added)

have been clear that automobiles are motor vehicles as defined by this statute. See State v. Booher, 978 S.W.2d 953, 956 (Tenn. Crim. App. 1997) (rejecting argument that an automobile is not a 'motor vehicle' and concluding that 'appellant's 1985 Dodge Daytona is a motor vehicle)." (Doc. 37, PageID # 337)

Tennessee courts have read *Booher* to mean that all automobiles are motor vehicles under T.C.A. § 55-1-103(c), regardless of commercial use. But *Booher* does not address whether enforcement of title 55 against a licensee requires administrative process before resort to criminal arrest — the core issue here.

The claim that an automobile is always a motor vehicle is belied by the history of motor vehicle regulation since 1905, as noted above and in appendices. Neither GA nor the U.S. congress has voted to "regulate" private activity on the public road — ever. The record of laws in this petition show regulation is on business use, not on constitutionally protected or free use, as that on Nov. 22, 2023, by a press member. Such judicial canoodling in disallows the law to operate and protect constitutionally guaranteed, God-given liberties.

The pretense of universal obligation upon motorists — in Tennessee forbidden by Tenn. Const. Art. 11 § 16 [16]— is belied by the nature of state privilege or excise. Saying all use necessarily is under license is like saying all speech necessarily is under license, or that all children conceived necessarily are under license, all apart from any law. An automobile *becomes* a motor vehicle when the owner applies and pays to register it with the department of revenue for the purpose of privilege taxable activity. The owner registers the private conveyance to make it an "instrumentality of interstate commerce or a thing in interstate commerce" United States v. Lopez, 514 U.S. 549, 559 (1995).

If appellant has done that, he has rights under exhaustion. If he hasn't done that and is not licensed or registered, he has rights to be approached by the officer for crimes or public harm threats only. The court's statements about motor vehicle being "[defined] broadly" and "without

[16] Tenn. Const. Art. 11 § 16: 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**.

any reference to commerce" in T.C.A. § 55-1-103(c) are misleading, as if the court were trying to get away with defining dog as "an animal with four legs." [17]

Booher says that driving and operating a motor vehicle are a privilege, and that privilege regulation doesn't implicate the right to travel, meaning doesn't offend the right to private travel. Travel means self-propulsion, movement, ingress-egress – and more, Booher says. "Travel, in the constitutional sense, however, means more than locomotion; it means migration with the intent to settle and abide" *Id.* Booher at 955. This sentence has been relied on for 38 years for the prosecutorial and judicial doctrine bringing disorder to the law. It's craftily written to be read as saying "ONLY migration is recognized under the constitution as travel" and not locomotion. It doesn't actually say that. It says locomotion is travel, and migration is travel. The latter does not under the rules of construction and our constitutional protections delete the former. If it's true that, as the court indicates, automobile = motor vehicle, it follows in Booher's judicial casuistry

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[17] "[Transported]" appears in the definition of vehicle, making vehicle commercial.

> **(9)** "Commerce" means:
>
> > **(A)** Trade, traffic, and **transportation** within the jurisdiction of the United States; between a place in a state and a place outside of the state, including a place outside the United States; and
> > **(B)** Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation in subdivision (9)(A)

T.C.A. § 55-50-102 (emphasis added)

A **motor vehicle** is a **vehicle** which is a **freight motor vehicle.** These three terms are synonyms, and describe instrumentalities in commerce as defined by T.C.A. § 55-50-102(9)(A) and (B).

> **(c)** "Motor vehicle" means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, personal delivery devices, and every vehicle that is propelled by electric power obtained from overhead trolley wires. "Motor vehicle" means any low speed vehicle or medium speed vehicle as defined in this chapter. "Motor vehicle" means any mobile home or house trailer as defined in § 55-1-105.
>
> **(e)** "Vehicle" and "freight motor vehicle" means every device in, upon, or by which any person or property is or may be **transported** or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

T.C.A. § 55-1-103 (emphasis added)

that privilege = nonprivilege, that taxable = nontaxable, untenable propositions for an honest court.

Appellant sues for recognition that ***driving a motor vehicle is a privilege***, with which statement defendants agree.

Mr. Bennett cites title 55. Its entire corpus is privilege law. It is commercial under Tenn. Const. Art. II § 28 and 49 U.S.C. transportation. Titles 55 and 65, chapt. 15, are federal because Tennessee government is member of the unified carrier registration system set up by the U.S. department of transportation, in accordance with 49 U.S.C. § 13908. "The commissioner of revenue is authorized to participate in the unified carrier registration plan and agreement established in accordance with 49 U.S.C. § 14504a, and to file on behalf of this state the plan required by 49 U.S.C. § 14504a(e)" T.C.A. § 65-15-101.

Notices are **EXHIBIT No. 1** (Doc. 1 PageID # 43) showing the "public offense" standard of warrantless misdemeanor arrest. **EXHIBIT No. 2** showing privilege operations in titles 65 and 55 in the occupation of transportation (Doc. 1 PageID # 59).

Defendants waived any right to dispute their myriad citations to law and court rulings.

VIII. COURT'S ERRONEOUS CRIMINAL AUTHORITY PREMISE

The trial court views the case solely through Tennessee's and sheriff's criminal authority. The premise of the complaint is that if appellant has done wrong in a relationship with the state, the state's remedy must first be under administrative law. "Traffic stops" are regulatory and administrative license agreement enforcement. Mr. Bennett crossed the line from administrative enforcement to criminal enforcement without a legal ground on which that criminal authority might land.

A damaged taillight is not in title 39, the criminal code. He violated the UAPA by denying his accused access to that remedy first (Doc. 1, PageID #3, ¶7). He followed county and Garrett departmental policy premise of criminal authority applied upon an alleged administrative equipment defect. Defendants do not possess trooper authority under T.C.A. § 40-7-103(c) to pull over a motor vehicle without probable cause to ask showing of a driver license.

IX. APPELLANT RELIED ON DEFENDANTS' ACCEPTANCE

Appellant's allegedly criminal acts are without *mens rea*. He uses the roads with a clear conscience, and he relied on defendants' acquiescence to properly served and notoriously published legal notice as to relevant law on privilege taxable activity and on arrest. They are on record as understanding, agreeing and acquiescing to the laws.

The complaint alleges the arrest had no probable cause, given the law, and given defendants' knowing the law and knowing at least putatively their defendant's state of *scienter* regarding alleged infractions of the title 55 light law. The court unjustly allows defendants to escape after appellant had relied on their acquiescence to his two notices, establishing his state of mind and the laws cited regulating their actions. Under notice, they would appear barred by estoppel by entrapment from imprisoning and arresting him for alleged privilege wrongdoing where *mens rea* doesn't apply. [18]

X. CRIMINAL AUTHORITY MISDIRECTED

Mens rea or guilty mind is requisite in all allegations of crime in title 39, the state criminal title. Titles 55 and 62 are not in the criminal code. The criminal code where all criminal charges must allege and prove intent excludes damaged taillights and such defects or conditions that are addressed by privilege regulation outside the criminal code. Bennett wants to attack a member of the public his way, for his own convenience — using regulatory law to allege a crime *AS IF* it were in title 39, but making no allegation of *mens rea*, which is an essential element of a criminal charge. Dismissal lets defendants go, free to abuse the public with a mix of criminal and administrative law, provisions selected prejudicially against appellant to deny him due process.

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[18] If an act is a crime, the accuser is required to allege knowingness or intentionality.

> (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.
> ***
> (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.

T.C.A. § 39-11-301. Mental state (emphasis added)

Appellant is not proposing the state be denied its police power to regulate or to settle its grievances against citizens. It enforces license and privilege agreements people make with its agents via UAPA, civil administrative enforcement in contested cases in agency. "Soft" authority is backed ultimately by the "hard" misdemeanor penalty that it can exercise in circuit or chancery court or by petition to the district attorney for criminal prosecution. That sanction exists in virtually every privilege extended to a member of the public. Criminal sanction is at the end of any dispute process with a licensee in the state's ultimate interest to protect the collect, uphold the health, safety and welfare of the public. [19]

A damaged taillight is not a crime, according to the history of motor vehicle regulation, and the sufficient complaint (Doc. 1). Mr. Bennett unreasonable arrests, imprisons, handcuffs, jails and criminal prosecutes appellant when his principal, state of Tennessee, has law letting its agents to enforce the statewide privilege in department of safety. A civil summary violation, infraction or offense, under title 55, under title 65, is not a crime, as defendants know.

Mr. Bennett declaimed his authority under title 55 by saying appellant is not involved in commerce. If not, what then? He makes an arrest absent a crime, with the court's approval. The court should see he denies his own probable cause in that statement. He lacks criminal authority as he had not seen appellant commit a felony or misdemeanor. He lacks authority under T.C.A. § 40-7-103 to make a judicial determination a crime has taken place, and that appellant did it. He theoretically might have had authority under title 55, but defendants waive that issue.

As a private citizen under T.C.A. § 40-7-109, arrest by private person – grounds, Bennett "may arrest another (1) for a public offense committed in the arresting person's presence" or (2) a felony. A damaged taillight is not a "public offense" under T.C.A. § 40-7-103 or -109,

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[19] Violation of the tattoo privilege law is a misdemeanor. The envisions no enforcement by deputies or city police officers under criminal authority, but a UAPA hearing under the tattoo board:

> **(a)** Any person who does not obtain a permit as required in § 62-38-202 or whose permit has been revoked or suspended and who continues to tattoo or operate a tattoo establishment commits a Class B misdemeanor *** .
> **(b)** Any suspension or revocation may be appealed to the local health officer who shall then conduct a hearing of the appeal in accordance with the Uniform Administrative Procedures Act ***.
> **(c)** 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

actionable by Mr. Bennett either in officer or in his private capacity as a man or citizen under sect. 109. The court says Atwater destroys the requirement Mr. Bennett make the "public offense" test as an officer making a warrantless misdemeanor arrest.

It says nothing about T.C.A. § 40-7-109, the private citizen authority for a warrantless arrest. Mr. Bennett is sued in his person because that's the capacity in which he acted, seizing a citizen without a public offense to justify the seizure.

Appellant doesn't waive issues waived by parties in cases cited by the court in dismissal. The laws defendants invoke to criminally jail and prosecute him are not within their purview or grant, except by long custom of which the people in Hamilton County have grown weary and angry.

The motor vehicle law is *federal* privilege management of motor carriers and motor vehicles (Doc. 1 PageID # 9). County deputies and city cops have no authority to administer — with criminal "conservator of the peace" police power, no less — the tax authority given state troopers in § 4-7-101 *et seq* and title 65, chapter 15. Criminal enforcement by defendants denies appellant his due process rights to be protected under UAPA by channeling state enforcement through structured administration rather than streetside imprisonment and arrest, properly described as "poaching" (Doc. 1, PageID # 12 ¶37).

In sum: Appellant's theory is not novel, but simply unwaived. Courts routinely presume criminal authority in traffic enforcement by stipulation or inattention. Here, appellant preserves the issue, pled it with clarity in sessions court after his arrest (**APPENDIX EX. No.1**), and provided unrebutted documentation. That is enough to warrant reversal and remand.

8. Relief requested

Appellant asks the court:

1. **Reverse** the district court's order dismissing the complaint under Rule 12(b)(6);
2. **Hold** that appellant has plausibly alleged a violation of his Fourth and Fourteenth Amendment rights through arrest without probable cause and without adherence to statutory arrest authority under T.C.A. § 40-7-103;

3. **Find** that Tennessee's administrative enforcement framework under the Uniform Administrative Procedures Act (UAPA), T.C.A. § 4-5-101 et seq., governs disputes involving licensed privilege activities under Title 55;
4. **Acknowledge** that appellant's properly served administrative notices concerning privilege regulation and warrantless arrest law were material and unrebutted facts relevant to the plausibility of the claims;
5. **Determine** that it is for a jury to decide whether the defendants' bad faith, failure to exhaust administrative remedies, and disregard of notice constitute violations of clearly established rights;
6. **Remand** for further proceedings, including discovery and trial by jury, on the merits of appellant's claims.

Respectfully submitted,

David Jonathan Tulis

CERTIFICATE OF SERVICE

I hereby certify that on this Monday, July 7, 2025, a copy of this document is being sent by e-mail to defendants' attorney Sharon Milling of the Hamilton County attorney's office at the following address:
SharonM@hamiltontn.gov

/s/ David Jonathan Tulis

CERTIFICATION UNDER RULE 32(G)

Appellant certifies that the word count of this brief, created under a Google Docs account, is 12,934 words, excluding disclosure statement; table of contents; table of citations; statement regarding oral argument; addendum containing statutes, rules, or regulations; certificate of counsel; signature block; proof of service; and any item specifically excluded by these rules or by local rule.

FRAP rule 30 appendix

A. Relevant docket entries below

1. Doc. 1 COMPLAINT against All Defendants
2. Doc. 11 MOTION for Temporary Restraining Order
3. Doc. 12 AFFIDAVIT in Support of Motion for Injunctive Relief
4. Doc. 13 BRIEF in Support of Motion
5. Doc. 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM Bennett, Garrett
6. Doc. 15 MEMORANDUM in Support of Motion
7. Doc. 16 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Hamilton County
8. Doc. 18 MEMORANDUM in Support of Motion
9. Doc. 25 RESPONSE in Opposition to TRO
10. Doc. 27 RESPONSE to 16 MOTION TO DISMISS by county
11. Doc. 28 RESPONSE to 14 MOTION TO DISMISS by Bennett, Garrett
12. Doc. 37 MEMORANDUM OPINION granting 16 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Hamilton County Government, 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Austin Garrett, Brandon Bennett. **[see attached]**
13. Doc. 38 JUDGMENT ORDER re 37 Memorandum Opinion

B. Attached filings

1. The district court's dismissal order
2. Appellant analysis of principles of notice, Doc. 28, pageID ## 267, 268

Appendix

16 exhibits of law, cases, filings

This appendix of certified or linked Tennessee laws is provided to establish the jurisprudence of privilege regulation of the operation of automobiles as motor vehicles, including appellant's challenge to the Hamilton County general sessions court's subject matter jurisdiction in his criminal prosecution in violation of his rights under UAPA (**APPENDIX EX. No. 1**).

Note: Documents in this list with asterisks are certified by the Tennessee state librarian, with each page stamped, & inked stamp and signature on the back of sections, hard copy with clerk.

1. State of Tennessee v. David Jonathan Tulis, defendant Affidavit, pre-plea remedy & avoidance, Jan. 12, 2024, general sessions court in Hamilton County, Docket nos. 1930155, 1930156, defending right to contested case in DOSHS under UAPA
2. Phillips v. Lewis, Shannon's Code, Vol. III 230, 240 (1877)
3. 1905 private acts of the Tennessee general assembly, 3pp. Starting p. 370ff https://archive.org/details/actsstatetennes23tenngoog/page/n7/mode/2up
4. In 1911, private acts of theTennessee general assembly, 3pp. starting p. 1288 - applies to Sullivan County, regulation of automobiles used for "the purpose of transporting or conveying persons or freight or for any other purpose" https://babel.hathitrust.org/cgi/pt?id=nyp.33433008588612&seq=9
5. 1917, Shannon's compilation of Tennessee statutes, Vol. 1, automobiles for hire or rent, privilege tax imposed
6. Shannon's 1917 Vol. 2 compilation, chapt. 333, registration of automobiles, and the regulation of their operation, "used for the purpose of conveying persons or freight or for any other [business] purpose"
7. Shannon's 1918 Vol. 5 compilation of Tennessee statutes, registration of any auto, motorcycle, auto truck or "other vehicle of like character" used for conveying persons or freight; plates required; fees pay county road repair
8. Shannon's 1918, taxes on automobiles for hire or rent

9. 1921 private act, chapt. 566, for Hamilton County for "all owners or operators of 'for hire' vehicles," County Technical Assistance Service website of state private acts

10. 1925 Hamilton County private act on taxis, "declared to be common carriers," required to have bond or insurance

11. *** Tennessee code 1932 Vol. 1, privileges, taxable registration of autos. § 1149 registering vehicles for freight, passengers. No "operating" without tag required for vehicles §1160. Art. III rules of road for vehicles. Role of justice of peace at § 2699. Misdemeanor penalty, § 2706

12. *** 1932 Code of Tennessee, Vol. 2, code commission, for motor vehicles, utilities, barbering (with board of examiners at 7134), embalmers (administrative board created 7140, 3052a63, p. 1626), plumbers (board created 7152 3079a224 p. 1628)

13. *** The 1934 Annotated Code of Tennessee, Vol. 4, Article IA "motor carriers."

14. United States Code: Motor Carrier Act, 49 U.S.C. §§ 301-327 (Suppl. 1 1934). Chapter 8 deals with any who "transports passengers or property *** by motor vehicle for compensation" and "[excepts] from operation" a large group of users, including "(9) the casual, occasional, or reciprocal transportation of passengers or property in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business." https://tile.loc.gov/storage-services/service/ll/uscode/uscode1934-00204/uscode1934-002049008/uscode1934-002049008.pdf

15. 1947 U.S. Statute 61 Pg. 633, rules of construction defining vehicle as "a means of transportation on land" uscode.house.gov/statviewer.htm?volume=61&page=633#

16. *** 1947 Williams Code of Tennessee, Vol. 3, "Regulation of motor and other vehicles," § 2681 ff. Note p. 17, Article IIIC, "Motor vehicle operators' and chauffeur's license act," indicating regulation upon operators, equivalent to chauffeur. Exhibit on demand statute solely for use of highway patrolmen, 2715.21