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RESPONDENT'S MOTION TO DISMISS AND MEMORANDUM

1 Tracy Arnold moves this court to dismiss cause numbers 2017-116, 2017-117 and
2 2017-118 pursuant to the Due Process Clause, for lack of evidence and failure to provide
3 Due Process. There is complete diversity of parties. The tickets having been sworn to con-
4 tain only 23 CFR Chapter 3 § 1327 Appendix A codes. The enforcement with penalties
5 for violating this federal law is not before the court. 23 CFR Chapter 3 § 1327 Appendix
6 A codes cannot confer jurisdiction on any state court. The City of Guntown has substi-
7 tuted state code provisions with no sworn complaint. The state codes regard some gen-
8 eral revenue tax dispute. The Prosecution had an obligation to produce the factual suffi-
9 ciency of a known legal duty to pay a general revenue tax applied to a “for profit activity
10 affecting a public interest”, and the factual sufficiency Tracy knowingly breached a duty.
11 The City of Guntown has failed to provide the factual sufficiency to the essential ele-
12 ments of the terms in state penalty codes and has failed to provide any sworn complaint
13 stating with particularity facts and circumstances.

STATEMENT OF FACTS

14 Tracy is the “common man” using the everyday language because “every-one is ex-
15 pected to know the law and ignorance of the law is no excuse.” Tracy has, to the best of
16 her ability, done her due diligence.

17 Tracy is not in receipt of the facts to the essential elements of the willfullness that were
18 sworn to on the traffic ticket;

19 Tracy is not in receipt of the facts to the essential elements of the terms within the penalty
20 statutes that were merely recited;

21 The Municipal court forced Tracy to trial without an arraignment;

22 The Guntown Municipal Court over Tracy's objection, entered a plea of not guilty;

23 The court's reason for dismissing Tracys bill of particulars was that starting on July, 1
24 2017 Tracy would have discovery rules pursuant to MRCrP 17.10;

25 MRCrP 3.1(c) states in the comments that "these rules do not apply to traffic misde-
26 meanors and misdemeanor traffic tickets are governed by statute MS Code § 63-9-21;

27 MS Code § 63-9-21 reads "the ticket shall include information that will constitute a
28 complaint charging the offense for which the ticket was issued..."

TRAFFIC TICKETS AND CHARGES NOT MADE

1 The traffic tickets allege Tracy breached record keeping provisions found appendix a
2 of 23 CFR 3 sec. 1327 and established under 49 U.S.C 30302 as stated within MS Code
3 § 63-1-211 ..."National Driver Register Act";

4 MS Code § 65-1-79. Agreements for purpose of securing federal aid funds available
5 under Title 23, United States Code The State Highway Commission is authorized to enter
6 into agreements with the United States of America for the purpose of securing federal aid
7 funds when available under the provisions of Title 23, United States Code.

8 Each code printed in the "offense" section on the face of each ticket matches the codes
9 found in the NDR which was established and is enforced under Federal Commerce Pow-
10 ers, Public Law 97-364, 97th Congress-Oct. 25, 1982, 96 Stat. 1746, 23 USC 401 note,
11 Criminal Penalties Sec. 208

12 There is no state B51 and no state D36;

13 Prosecution merely recited MS Code § 27-19-31, MS Code § 63-1-5 and MS Code §
14 63-15-4;

15 There has been no sworn complaint alleging Tracy breached any general revenue laws;
16 one cannot violate a penalty provision;

17 Tracy has not been provided the main general revenue tax law, empowering the court
18 or the factual sufficiency such general revenue tax law applies to Tracy;

19 The merely recited penalty provisions are not accompanied by affidavit and are not
20 found within any complaint to which Tracy is in receipt of;

21 MS Code § 63-1-5 references MS Code § 27-19-3 and provides that those within 27-
22 19-3 that do not require a commercial license (Class A, B or C) or require a special en-
23 dorsement, may in lieu of the Class R apply for and obtain a Class D;

24 MS Code § 63-1-211 states that " Class D licenses are not commercial driver's license
25 and shall be governed by the provisions of MS Code § 63-1-5;

26 Driver's License are either Commercial or Noncommercial;§ 63-1-203. Definitions: (f)
27 "Commercial motor vehicle" or "CMV" means a motor vehicle or combination of motor
28 vehicles used in commerce to transport passengers or property if the motor vehicle: (i)
29 Has a gross combination weight rating of(twenty-six thousand one (26,001) pounds
30 or more); (iii) Is designed to transport sixteen (16) or more passengers, including the

1 driver; (iv) Is of any size and is used in the transportation of hazardous materials:

2 Noncommercial does not mean Not-Commercial, commercial refers to a weight divi-
3 sion, passenger seating and hazardous materials designation.

4 Title 27 is a general revenue tax law for state wide taxes and state wide licenses to en-
5 gage in state wide privileges that are taxed

Miss. Code 27-19-1 provides that the Dep't of Revenue is charged with the duty of
administering and enforcing the terms and provisions of this article.

6 MS Code § 27-19-3 noncommercial carrier of property by motor vehicle means any
7 person... who or which transports in interstate or intrastate commerce on the public high-
8 ways of this state... other than for hire...

9 MS Code § 63-21-5 provides that automobiles which require the payment of a privi-
10 lege tax are motor vehicles;

11 Vehicles that engage in for profit activity affecting a public interest require a class
12 A,B,C,D or R license;

13 MS Code § 27-19-31 is a penalty statute for the failure to pay a privilege license tax of
14 which willfulness is an essential element;

15 Tracy is not in receipt of any factual sufficiency of Tracy voluntarily and intentionally
16 breached a known legal duty;

17 Tracy's home is within Tennessee;

18 Tenn. Code 5-8-102(a) Each county is empowered to levy privilege taxes upon mer-
19 chants and such other vocations,occupations, or businesses as are to be declared privi-
20 leges...

21 Tenn. code 5-8-102(b) Each County is empowered to levy... a motor vehicle privilege
22 tax as a condition precedent to the operation of a motor vehicle within the county;

23 Tenn. Code 55-4-101(a)(2) The registration and the fees provided for registration shall
24 constitute a privilege tax.;

25 The Privilege License Tax is a State-Wide License as defined within MS Code § 27-15-
26 3;

27 MS Code § 27-15-3 State-Wide Licenses states "it shall be the authority of the licensee
28 to engage in the business designated for the period of time under the conditions specified

1 therein"

2 Under the general revenue privilege tax laws it must be shown, Tracy engaged in for
3 profit activity affecting a public interest, to be liable for the payment of a privilege tax;

4 In order for Tracy to comply with MS Code § 63-1-5 (Driver's License) Tracy must
5 first be liable to pay a privilege tax under MS Code § 27-19-31 for a motor vehicle li-
6 cense tag;

7 In order for Tracy to comply with 27-19-57 vehicle registration to get a tag Tracy must
8 show a drivers license;

9 MS Code § 63-1-33(3) mandates the payment of a privilege license tax in order to ob-
10 tain a driver's license; to receive a driver's license the test must be in a vehicle registered,
11 licensed and insured.

12 MS Code § 63-1-33(3) mandates proof of insurance prior to obtaining a driver's li-
13 cense;

14 In order for Tracy to comply with MS Code § 63-15-4 (Insurance) Tracy must first be
15 liable to pay a privilege license tax under MS Code § 27-19-31;

16 Insurance Companies are not mandated to provide insurance;

17 Insurance Companies require a driver's license and the payment of a privilege license
18 tax in order to do business with them;

19 Prosecution has merely attempted to enter the allegations as evidence;

20 Prosecution has not provided any facts to the essential elements of terms of the accusa-
21 tions against Tracy Arnold;

22 Prosecution has not submitted any evidence of Tracy engaging in Interstate or In-
23 trastate commerce;

24 MS Code § 63-21-69 is in regard to the application for and issuance of the certificate
25 of title and privilege license and implements the provisions and requirements of MS Code
26 § 27-19-59 and 27-19-61;

27 It is the application for title that obligates the privilege tax and ad valorem tax;

28 Title 27 Chapter 19 of the MS Code § is Taxation and Finance - Privilege and Excise
29 Taxes

30 Tracy has not made application for title;

31 Tracy did not sign any title;

TESTIMONY MADE

1 Michael Hall testified under oath on September 14th 2017 that Bree Lucas was under
2 his command on March 24th 2017;

3 Bree Lucas testified that she stopped Tracy for "No Tag";

4 Bree Lucas testified that her training included detailed information on each box
5 checked on each of the tickets;

6 Bree Lucas testified that she knew the law;

7 Bree Lucas testified that she did not recall a State B51;

8 Bree Lucas testified she did not understand the question when Tracy asked "Do you
9 have any evidence you can testify to that I was engaged in some occupation, business,
10 employment or the like?"

11 Bree Lucas testified that the affidavits say you are guilty of the things mentioned.

STATEMENT OF THE ISSUES

I

12 MS Code § 27-19-31 states wilfully failed to pay a privilege license tax. Tracy was not
13 engaged in for profit activity affecting a public interest on March 24th 2017. Tracy has
14 not been provided factual sufficiency amounting to authenticated evidence of Tracy en-
15 gaging in for profit activity affecting a public interest on March 24th 2017.

II

16 MS Code § 63-1-5 states those within MS Code § 27-19-3 that are not required to
17 have a class a,b or c license and not required to have a special endorsement, may in lieu
18 of the class r apply for and obtain a class d. Tracy was not using the roads for livelihood,
19 profit or gain on March 24th 2017. Tracy has not been provided any factual sufficiency
20 amounting to authenticated evidence that a driver's license is anything other than a tax
21 receipt for engaging in the business of operating a motor vehicle or other instrumentality
22 of commerce ie a special class.

III

1 MS Code § 63-15-4 mandates motor vehicles to have insurance and failure to have in-
2 surance is punishable by fine and suspension of driving privilege. Tracy was not operat-
3 ing a motor vehicle and was not engaging in for profit activity affecting a public interest.
4 The prosecution has not provided factual sufficiency amounting to authenticated evi-
5 dence that the motor vehicle is anything other than an instrumentality of commerce for
6 which a privilege tax is required.

IV

7 Pursuant to MS Code § 63-9-21(3)(c) the traffic tickets shall include information that
8 will constitute a complaint charging the offense. The traffic tickets allege Tracy willfully
9 and intentionally violated NDR codes found in the appendix a of 23 CFR Ch 3 Sec 1327.
10 Prosecution may not prosecute Tracy on merely recited codes that are not set forth within
11 the complaint and do not exist within 23 CFR Ch 3 Sec 1327.

V

12 Due process requires prosecution to prove the facts to each essential element of the ac-
13 cusations beyond a reasonable doubt. Tracy has no intent to breach a known legal duty
14 and intends to fulfil each duty of which she owes. The prosecution has not provided fac-
15 tual sufficiency to the essential elements of the merely recited penalty statutes.

ARGUMENT

I

16 MS Code § 27-19-31 states wilfully failed to pay a privilege license tax. Tracy was not
17 engaged in for profit activity affecting a public interest on March 24th 2017. Tracy has
18 not been provided factual sufficiency amounting to authenticated evidence of Tracy
19 engaging in for profit activity affecting a public interest on March 24th 2017.

20 On September 24th 2017 Bree Lucas testified under oath that she stopped Tracy for
21 “No Tag”. (SEE EXHIBIT NO TAG) Prosecution, without a supporting complaint pros-
22 ecuted Tracy for breaching a known legal duty to pay a privilege license tax. The prose-
23 cution only provided MS Code § 27-19-31 which falls under Taxation and Finance Privi-

lege and Excise Taxes. The prosecution has failed in its duty to provide the facts, amounting to authenticated evidence, to the essential elements of privilege which infringes on Tracy's rights to Due Process. Tracy was not engaged in for profit activity affecting a public interest on March 24th 2017. The facts to the essential elements of the terms of MS Code § 27-19-31 requires that prosecution prove beyond a reasonable doubt the facts to the essential elements of the terms privilege and willfulness.

"The essential elements 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, pursuits, 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."...."The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value.") Phillips v. Lewis, 3 Shann. Cas. 231

"the right of the citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus...This distinction, elementary and fundamental in character, is recognized by all authorities." Hadfield v. Lundin 98 Wash. 657, 663; 168 Pac. 516

The streets belong to the public, and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and, generally at least, may be prohibited or conditioned as the legislature deems proper. . . . Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance or permission. In the latter case, the power to exclude altogether generally includes the lesser power to condition, and may justify a degree of regulation not admissible in the former. See Davis v. Massachusetts, 167 U. S. 43. Packard v. Banton, 264 U.S. 140, 144, 145

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

1 “Any occupation, business, employment or the like, affecting the public, may be
2 classed and taxed as a privilege. *K. & O. Railroad v. Harris*, 99 Tennessee, 684. *Allen*
3 *V. Pullman's Palace Car Company*, 24 S. Ct. 39, 191 U.S. 171

4 “The right to travel is a part of the 'liberty' of which the citizen cannot be deprived
5 without due process of law under the Fifth Amendment.” - *Kent v. Dulles*, 357 U.S.
6 116 (1958) 481, 125

7 Tracy Arnold is not a resident nor is she domiciled in Mississippi. Tracy Arnold lives
8 near Adamsville Tennessee, therefore argues that Tennessee cases and statutes may be
9 quoted in this instant suit. In Tennessee, statute clearly says that privilege taxes are taxes
10 upon merchants, vocations, occupations or businesses. The Legislature has discretionary
11 power to declare whatever business, occupation, vocation or business a privilege as it sees
12 fit. The Legislature cannot name the mere ownership or use of property a privilege and
13 tax it as such unless it is first a privilege.

14 Tennessee Code Section 5-8-102. Privilege tax - Motor vehicle tax

15 (a)Privilege Taxes Authorized.- Each county is empowered to levy privilege taxes
16 upon merchants and such other vocations, occupations or businesses as are declared
17 to be privileges, not exceeding in amount that levied by the state for state purposes.

18 (b)Motor Vehicle Tax -- Authorization.-Each county is empowered to levy for county
19 purposes by action of its governing body a motor vehicle privilege tax as a condition
20 precedent to the operation of a motor vehicle within the county. The tax may be
21 levied on any motor vehicle taxable by the state.

22 Tennessee Code- Section 55-4-101. Registration required before operation -

23 (2)The registration and the fees provided for registration shall constitute a privilege
24 tax upon the operation of motor vehicles.

25 All motor vehicles are required to have paid the privilege tax as required within MS
26 Code § 27-19-31 and driver's of motor vehicles are required to have driver's licenses.
27 Tracy alleges that she does not operate a motor vehicle as she does not use the roads for
28 livelihood or gain and does not engage in for profit activity affecting a public interest. MS
29 Code § 63-21-5 provides motor vehicles are automobiles that are required to pay the
30 privilege tax. Tracy has a reliance defense, she has an absolute right to the use of the
31 roads in the usual and ordinary conveyance of the day which is by automobile (See
32 *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 583, 71 A.L.R. 604, 610) as other

1 modes of travel have been hampered by the commercial use of the roads making them
2 unsafe for horses, bicycles, walking etc.

3 “.... First. It is well established law that the highways of the state are public property;
4 that their primary and preferred use is for private purposes, and that their use for pur-
5 poses of gain is special and extraordinary, which, generally at least, the legislature
6 may prohibit or condition as it sees fit.” Stephenson v. Binford, 287 U.S. 251

7 “Page 357 The statute relates to motor vehicles, comprehensively defined, when used
8 upon any public highway of the state for the purpose of transporting persons or prop-
9 erty..page 360 Application therefor must give information as to ownership, financial
10 condition and equipment, and such further facts as the public service Commission
11 may request....page 366 Motor vehicles may properly be treated as a special class”
12 Continental Baking Co. Et Al. V. Woodring, 52 S. Ct. 595, 286 U.S. 352

13 Page 373 "The distinction between property employed in conducting a business which
14 requires constant and unusual use of the highways and property not so employed is
15 plain enough." Continental Baking Co. Et Al. V. Woodring, 52 S. Ct. 595, 286 U.S.
16 352

17 “ At the outset, it cannot be questioned that the public generally has an **absolute**
18 **right** to use the public roads and highways in a customary and reasonable manner so
19 long as they are not properly closed to public use by legislative sanction. Muse v. Mis-
20 sissippi State Highway Commission, 233 Miss. 694, 103 So.2d 839 (1958)

21 Tracy Arnold has requested by motion, for the prosecution to provide factual suffi-
22 ciency of the roads being closed to the public by legislative sanction. Tracy is not in re-
23 ceipt of any factual sufficiency of the roads being closed to the public by legislative sanc-
24 tion, therefor, has reason to believe that the roads have not been closed to the public by
25 legislative sanction, thus only open to instrumentalities of commerce ie motor vehicles.
26 Tracy has a perliance defense, she has an absolute right to use the public roads and high-
27 ways so long as she does not use the roads for livelihood or gain.

28 On the face of the ticket and within the copy of MS Code § 27-19-31 provided by the
29 prosecution in the municipal court, willfulness is an element and must also be proven be-
30 yond a reasonable doubt. "[a] person will not be presumed to act with criminal intention.
31 Francis V. Franklin, 105 S. Ct. 1965, 471 U.S. 307

32 "to prove "willfulness" the Government must prove the voluntary and intentional vi-
33 olation of a known legal duty, a burden that could not be proved by showing mistake,
34 ignorance, or negligence." Cheek V. United States, 111 S. Ct. 604, 498 U.S. 192 (U.S.
35 01/08/1991)

1 “..... to reaffirm the rule that in suits to recover penalties, strictly statutory, the proof
2 of wilfulness or wantonness, or the equivalent thereto, is nonessential only in those
3 cases where the penalty prescribed by the statute is a percentage of the normal tax or
4 is not greatly in excess of the amount thereof, and that in all such cases where the
5 amount of penalties sought to be recovered are greatly in excess of the normal tax im-
6 posed by law, there can be no recovery of the same without proof of a wilful, wanton
7 or reckless failure of the defendant to pay the normal tax or other statutory liability at
8 the time the same becomes due and payable. *Mercury Transport v. Vehicle Comm.*,
9 21 So. 2d 25 (Miss. 1945) Filed: February 26th, 1945 Precedential Status: Preceden-
10 tial :Citations: 21 So. 2d 25, 197 Miss. 387 Docket Number: No. 35786.

11 Tracy argues that her liberty is deprived without due process in violation of the fifth
12 amendment because she has been denied the facts to the essential elements of the allega-
13 tions against her and the conviction from the municipal court is a sham and is an attempt
14 to defraud Tracy. The allegations are baseless and probable cause must be proven.

15 “We hold that want of probable cause must be alleged and proven.” *Hartman v.*
16 *Moore*, 126 S.Ct. 1695, 547 U.S. 250, 164 L.Ed.2d 441 (U.S. 04/26/2006)

17 "Sufficient information must be presented to the magistrate to allow that official to
18 determine probable cause; his action cannot be a mere ratification of the bare conclu-
19 sions of others." *Ibid.* See *Aguilar v. Texas*, supra, at 114-115; *Giordenello v. United*
20 *States*, 357 U.S. 480 (1958); *Nathanson v. United States*, 290 U.S. 41 (1933)

21 Tracy Arnold argues that the prosecution has not provided any facts to the essential el-
22 ements of willfulness or privilege as required by Mississippi Code § 27-19-31. In this in-
23 stant suit, probable cause requires facts or evidence of for profit activity affecting a public
24 interest and that Tracy did in fact breach a known legal duty to pay a privilege
25 tax.“Whether a duty exists is a question of law.” *Rein v. Benchmark Constr. Co.*, 865
26 *So.2d* 1134, 1143

27 The “critical inquiry” involves “whether the evidence shows ‘beyond a reasonable
28 doubt that [the] accused committed the act charged, and that he did so under such cir-
29 cumstances that every element of the offense existed; and where the evidence fails to
30 meet this test it is insufficient to support a conviction.” *Bush v. State*, 895 So. 2d
31 836, 843 (Miss. 2005)

32 “The defendant's right to be sued in accord with the statutory terms has long been
33 construed to be valuable and substantial, not a mere technical right. *Jefferson v.*
34 *Magee*, 205 So. 2d 281 (Miss. 1967); *Crosby v. Robertson*, 243 Miss. 420, 137 So.
35 2d 916 (1962); *Long v. Patterson*, 198 Miss. 554, 22 So. 2d 490 (1945); and *Trolio v.*
36 *Nichols*, 160 Miss 611, 133 So. 207 (1931). *Billy Jefferson V. Ewell Magee*, 205 So.

1 2d 281 (Miss.12/20/1967)

2 "[A] State must prove every ingredient of an offense beyond a reasonable doubt
3 and . . . may not shift the burden of proof to the defendant by presuming that ingredi-
4 ent upon proof of the other elements of the offense"). . . . "I charge you that before
5 the State is entitled to a verdict of conviction . . . the burden is upon the State of prov-
6 ing the defendant's guilt as charged in such count beyond a reasonable doubt. Francis
7 V. Franklin, 105 S. Ct. 1965, 471 U.S. 307

8 Prosecution has not provided the factual sufficiency that Tracy has breached a known
9 legal duty to pay a privilege tax. (SEE EXHIBIT PRIVILEGE TAX)

10 Prosecution has not provided the court with facts or evidence that Tracy was in fact
11 engaged in for profit activity affecting a public interest. Prosecution has not proven be-
12 yond a reasonable doubt the facts to the essential elements of willfulness or privilege,
13 therefore, has not met its burden of proof and there is no probable cause.

II

14 MS Code § 63-1-5 states those within Mississippi Code § 27-19-3 that are not required
15 to have a class a, b or c license and not required to have a special endorsement, may in
16 lieu of the class r apply for and obtain a class d. Tracy was not using the roads for
17 livelihood, profit or gain on March 24th 2017. Prosecution has not provided any factual
18 sufficiency amounting to authenticated evidence that a driver's license is anything other
19 than a tax receipt for the privileged use of the roads.

20 MS Code § 63-1-5 references MS Code § 27-19-3 and provides that those within 27-
21 19-3 that do not require a commercial class license (Class A,B,C) or a special endorse-
22 ment, may in lieu of the Class R license apply for and obtain a Class D license. Taxi's,
23 Dray's and TNC drivers are examples of for profit instrumentalities of commerce that
24 only require a Class R or D license. MS Code § 63-1-211 provides that the Class D li-
25 cense is not a commercial license. The driver's license is a license to engage in a business
26 occupation or vocation not merely a permission to leave your house in the usual and or-
27 dinary conveyance of the day. The noncommercial class is anything under 26,001 lbs, 15
28 or less passengers and does not carry hazardous material that uses the road for profit,
29 livelihood or gain in interstate or intrastate commerce. Tracy relies on the rulings of the
30 Supreme Court of the United States that all vehicles which are required to pay a privilege

1 tax are motor vehicles and are instrumentalities of commerce. This is proven by Miss.
2 code 63-21-5 which provides that a self propelled vehicle that is required to have paid the
3 privilege license tax is defined as a motor vehicle. Privilege taxes are laid on commerce
4 and instrumentalities of commerce, "all things which occupy the time, attention and la-
5 bor of men for the purpose of a livelihood or profit".

6 Tracy states she was not operating a self-propelled instrumentality of commerce de-
7 fined as a motor vehicle, therefore not in breach of a payment of a general revenue privi-
8 lege tax on her chattel property used as the usual and ordinary conveyance. therefore not
9 liable to obtain a driver's license.

10 MS Code § 63-1-33. Examination of applicant for license or regular learner's permit

11 (3)Prior to the administration of the test, the license examiner shall inspect the horn,
12 lights, brakes, vehicle registration and proof of liability coverage of the motor vehicle
13 which the applicant expects to operate while being tested, and if he finds that any of
14 the aforementioned items are deficient, no license or endorsement shall be issued to
15 the applicant until same have been repaired.

16 MS Code § 63-1-33(3) provides that in order to obtain a driver's license you must first
17 have paid the privilege license tax (MS Code § 27-19-31). Since it is required to pay the
18 privilege license tax in order to obtain a driver's license it is obvious that the drivers li-
19 cense is in fact intended for the exercise of a profession, business or occupation (privi-
20 lege).

21 "A license confers a privilege, and makes the doing of something legal, which, if done
22 without it, would be illegal...Calling the tax receipt a "license" and the tax a "license
23 tax" does not confine the lawful authority to transact this business to those who have
24 paid the tax and procured the "license" any more than an ordinary tax on property
25 creates a right or authority to own property. A license is a police regulation control-
26 ling the exercise of a profession, business or occupation." FLANIGAN v. SIERRA
27 COUNTY., 25 S. Ct. 314, 196 U.S. 553

28 Tracy shows that requiring the payment of a privilege tax in order to obtain a driver's
29 license encompasses the license is a mere police regulation controlling the exercise of a
30 profession, business or occupation. Corpus Juris provides this same information and that
31 licenses are for the business designated.

32 37 C.J Licenses- FOR OCCUPATIONS AND PRIVILEGES Section 2 Privilege. A privi-
33 lege is the exercise of an occupation or business which requires a license from some

proper authority, designated by some general law.

MS Code § 63-1-5 references MS Code § title 27 which is Taxation and Finance. The state of Mississippi has power to tax property and privilege. For a state to name traveling, in the usual and ordinary conveyance of the day, a privilege and tax it is an unconstitutional misapplication of the law.. The legislature may name any privilege a taxable privilege but it must first be a privilege.

“Constitution imposes on the states no particular modes of taxation, and apart from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment.” Kirtland v. Hotchkiss, supra. Lawrence v. State Tax Comm'n of Miss., 286 U.S. 276

The ad valorem tax is obligated by the privilege tax which is required when a self propelled device is registered as a instrumentality of commerce, i.e., “motor vehicle”. Tracy did not breach a duty to pay a Mississippi privilege tax and prosecution has provided no factual sufficiency which would tend to prove beyond a reasonable doubt that Tracy did in fact engage in for profit activity affecting a public interest.

“Miss. Code § 27-51-7 provides that anyone who must pay a road and bridge privilege tax license on any motor vehicle must also pay an ad valorem tax on that motor vehicle as well...Only if Thomas Trucking were required by law to pay Mississippi's road and bridge privilege tax could it be made to pay Lee County's Ad Valorem tax...it is the payment of the road and bridge privilege tax that creates the ad valorem tax obligations” Thomas Truck Lease, Inc. v. Lee County, 768 So.2d 870

The Class R and Class D driver's license are noncommercial licenses. MS Code § 63-1-5 references MS Code § 27-19-3 which defines noncommercial carrier of property as any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or intrastate commerce on the public highways of this state by motor vehicle, property of which such person is the owner, lessee, or bailee, other than for hire.”

This shows that noncommercial is still for livelihood or gain but the motor vehicle may not accept hails and are not for hire.

Tracy contacted the tax collector and was told that a regular automobile is a passen-

ger motor vehicle. MS Code § 27-19-3 defines all other passenger motor vehicles as private carrier of passengers.

"every man is called a passenger who pays freight for his own person, and for goods which are not merchandise. Main V. Williams., 14 S. Ct. 486, 152 U.S. 122

The driver's license is permission to use the roads for livelihood or gain or for hire and is a privilege to use the roads in the special and extraordinary way. See Exhibit Privilege and Exhibit License-Privilege

Regardless of what it is called, the driver's license is permission to use the roads for livelihood or gain or for hire and is a privilege to use the roads in the special and extraordinary way. Bouvier's Law Dictionary defined Driver as One employed in conducting a coach, carriage, wagon, or other vehicle with horses, mules, or other animals. In 1914 it was well known that a driver was one employed on the roads and those who were not using the roads in for profit activity affecting a public interest were not drivers and were free to use the roads without being harrassed.

Blacks Law Second Edition defines driver as one in employed in conducting a... motor car... See EXHIBIT DRIVER

Tracy is not a driver, does not operate a motor vehicle, is not liable for the payment of a privilege tax and is not knowingly in breach of a known legal duty to obtain a license of any sort. Further Tracy relies on the Supreme Court of the United States that a motor vehicle is an instrumentality of commerce and is a special class created by its special use of the roads and requires the payment of a privilege tax.

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS • CHAPTER 21. MOTOR VEHICLE TITLES • ARTICLE 1. GENERAL PROVISIONS § 63-21-5. Definitions: (l) "Motor vehicle" means every automobile, motorcycle, mobile trailer, semitrailer, truck, truck tractor, trailer and every other device in, upon, or by which any person or property is or may be transported or drawn upon a public highway which is required to have a road or bridge privilege license, except such as is moved by animal power or used exclusively upon stationary rails or tracks.

Prosecution has not provided the factual sufficiency that MS Code § 27-19-31 applies to Tracy, has not proven beyond a reasonable doubt that Tracy has breached a known legal duty to pay a privilege tax. MS Code § 63-1-33(3)(c) requires that the privilege tax (MS Code § 27-19-31) be paid in order to obtain a driver's license. Therefore, there must

1 be factual sufficiency on the record of Tracy engaging in for profit activity affecting a
2 public interest on March 24th 2017. Without factual sufficiency of Tracy having a
3 known legal duty to pay a privilege tax, Tracy is not within the state code recitals of “op-
4 erating a motor vehicle without a driver’s license”.

III

5 MS Code § 63-15-4 mandates motor vehicles to have insurance and failure to have
6 insurance is punishable by fine and suspension of driving privilege. Tracy was not
7 operating a motor vehicle and was not engaging in for profit activity affecting a public
8 interest. The prosecution has not provided factual sufficiency amounting to authenticated
9 evidence that the motor vehicle is anything other than an instrumentality of commerce
10 for which a privilege tax is required.

11 Tracy has not knowingly and intentionally breached a known legal duty to apply for
12 and obtain insurance. Tracy has sent FOIA requests to the Mississippi Commissioner of
13 Insurance searching for the guidelines for approving or denying automobile insurance.

14 MS Code § 63-21-5 provides that all motor vehicles are automobiles or other vehicles
15 for which a privilege tax is required. Tracy states she was not operating a motor vehicle
16 as she is not engaged in taxable activity and only uses the roads in the usual and ordinary
17 conveyance of the day. *CONTINENTAL BAKING CO. ET AL. v. WOODRING*, 52 S.
18 Ct. 595, 286 U.S. 352 tells us that motor vehicles are of a special and extraordinary class
19 and comprehensively defined and is required to give information as to ownership, finan-
20 cial condition.

21 ((357)... The statute relates to motor vehicles, comprehensively defined, when used
22 upon any public highway of the state for the purpose of transporting persons or prop-
23 erty.

24 (360).... Application therefor must give information as to ownership, financial condi-
25 tion and equipment, and such further facts as the public service Commission may re-
26 quest. The Commission is required, upon receipt of this information and on compli-
27 ance with the regulations and payment of fees, to issue a license.

28 (366)Motor vehicles may properly be treated as a special class, because their
29 movement over the highways, as this Court has said, "is attended by constant and se-
30 rious dangers to the public, and is also abnormally destructive to the ways them-

selves." *Hendrick v. Maryland*, 235 U. S. 610, 235 U. S. 622; *Kane v. New Jersey*, 242 U. S. 160, 242 U. S. 167; *Michigan Public Utilities Commission v. Duke*, supra; *Interstate Busses Corp. v. Blodgett*, 276 U. S. 245, 276 U. S. 250-251; *Sprout v. South Bend*, 277 U. S. 163, 277 U. S. 169-170; *Hodge Drive-It-Yourself Co. v. Cincinnati*, 284 U. S. 335, 337.

(367)....The tax itself is certain, as, in the process of laying the tax, it is necessarily made certain before any penalty can be imposed for nonpayment.

(373) As the Court said in *Alward v. Johnson*, 282 U. S. 509, 282 U. S. 513-514:"The distinction between property employed in conducting a business which requires constant and unusual use of the highways and property not so employed is plain enough." See also *Bekins Van Lines v. Riley*, 280 U. S. 80, 280 U. S. 82; *Carley & Hamilton v. Snook*, 281 U. S. 66, 281 U. S. 73.") *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1932) No. 677.

((34) "*Issuing a policy of insurance is not a transaction of commerce. . . . Such contracts are not interstate transactions, though the parties may be domiciled in different states.*") *Western Union Telegraph Co. v. Kansas*, 216 U.S. 1 (1910)No. 4

Automobile insurance is not available for a private conveyance until the owner to applies for registration swearing the vehicle is an instrumentality of commerce,i.e.,”motor vehicle” pays the privilege tax for the special and extraordinary use of the roads requiring a driver’s license also requiring payment of a general revenue privilege tax. Therefore, the State is compelling commerce and denying Tracy her right to travel in the usual and ordinary conveyance of the day. The NDR was enacted by Congress which is limited to Commerce.

(USC Title 49-Subtitle A- Part 1- Organizing and Delegation of Powers and Duties Sec 1.87

Delegations to the Federal Motor Carrier Safety Administrator. (7) Section 32302(c) (2) regarding the establishment of state licensing agency oversight (49 U.S.C. 31149 note).§1.94 **The National Highway Traffic Safety Administration.** (a) *In highway safety*, setting uniform guidelines for....graduated driver's licensing;...administering the **National Driver Register;**”)

The record keeping provisions of NDR for actions already completed are the only items on the face of the tickets.

((p206) “....Congress may control the State laws so far as it may be necessary to control them for the regulation of commerce.(p210) ..That regulation is designed for the entire result,.... It produces a uniform whole...” *Gibbons v. Ogden* 22 U.S. 1

1 MS CODE § 63-1-5. 1 (b) The types of operator's licenses are: (I) Class R; (ii) Class
2 D; (iii) Class A, B or C commercial license governed by Article 5 of this chapter; (iv)
3 Intermediate license; and (v) Interlock-restricted license as prescribed in Section 63-
4 11-31.

5 Miss. Code Ann. § 63-1-202 The purpose of this article is to implement the federal
6 Commercial Motor Vehicle Safety Act of 1986 (49 USCS Appx. Section 2701 et
7 seq.),...the provisions of this article shall control.

8 ("..... this Court has adhered steadfastly to the rule that ""'words grouped in a list
9 should be given related meaning,'" " Dole v. Steelworkers, U.S. , (1990), quoting
10 Massachusetts v. Morash, 490 U.S. 107, 114-115 (1989), quoting Schreiber v.
11 Burlington Northern, Inc., 472 U.S. 1, 8 (1985), quoting Securities Industry Assn. v.
12 Board of Governors, FRS, 468 U.S. 207, 218 (1984), and that "'in expounding a
13 statute, we [are] not . . . guided by a single sentence or member of a sentence, but
14 look to the provisions of the whole law, and to its object and policy.'" Morash, 490
15 U.S., at 115, quoting Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 51 (1987).") .
16 *Ellis Gregory V. John D. Ashcroft*, 111 S. Ct. 2395, 501 U.S. 452 (U.S. 06/20/1991)
17 No. 90-50

18 ((p201) ...In a separate clause of the enumeration, the power to regulate commerce is
19 given, as being entirely distinct from the right to levy taxes.....If the legislative
20 power of the Union can reach them, it must be for national purposes, it must be
21 where the (p204) power is expressly given for a special purpose or is clearly incidental
22 to some power which is expressly given. It is obvious that the government of the
23 Union, in the exercise of its express powers -- that, for example, of regulating com-
24 merce with foreign nations and among the States -- may use means that may also be
25 employed by a State in the exercise of its acknowledged powers -- that, for example,
26 of regulating commerce within the State.....So, if a State, in passing laws on sub-
27 jects acknowledged to be within its control, and with a view to those subjects, shall
28 adopt a measure of the same character with one which Congress may adopt, it does
29 not derive its authority from the particular power which has been granted, but from
30 some other, which remains with the State and may be executed by the same
31 means.....(p210) ..That regulation is designed for the entire result, applying to
32 those parts which remain as they were, as well as to those which are altered. It pro-
33 duces a uniform whole which is as much disturbed and deranged by changing what
34 the regulating power designs to leave untouched as that on which it has operated.
35The word "license" means permission or authority, and a license to do any
36 particular thing is a permission or authority to do that thing, and if granted by a per-
37 son having power to grant it, transfers to the grantee the right to do whatever it pur-
38 ports to authorize. It certainly transfers to (p214) him all the right which the grantor
39 can transfer, to do what is within the terms of the license.The license must be
40 understood to be what it purports to be,.....no exception to the grant can be ad-
41 mitted which is not proved by the words or the nature of the thing.(p220)The
42 whole weight of proof, then, is thrown upon him who would introduce a distinction

1 to which the words of the law give no countenance.....(333)..**Licensing acts, in fact,**
2 **in legislation, are universally restraining acts;**") *Gibbons v. Ogden* 22 U.S. 1.

3 The commerce power licensing scheme as applied is used to restrict use of the high-
4 ways to instrumentalities of commerce only denying the use of the roads for the right to
5 travel in the usual and ordinary conveyance of the day.

6 ((300)If the [unconstitutional application of the] act is to be stricken down, it
7 must be on the ground that the Federal Constitution guarantees to the individual the
8 absolute right to.... [travel]..." *New State Ice Co. v. Liebmann*, 285 U.S. 262
9 (1932) No 463.

10 ("Shapiro implicitly realized what this Court has made explicit elsewhere: "It has
11 long been established that a State may not impose a penalty upon those who exercise
12 a right guaranteed by the Constitution . . . 'Constitutional rights would be of little
13 value if they could be . . . indirectly denied'. . . ." *Harman v. Forssenius*, 380 U.S.
14 528, 540 (1965).

15 See also *Garrity v. New Jersey*, 385 U.S. 493 (1967), and cases cited therein; *Spevack*
16 *v. 385 U.S. 511, 515 Klein*, (1967). **The right to travel is an "unconditional personal**
17 **right," a right whose exercise may not be conditioned.** *Shapiro v. Thompson*, 394
18 U.S., at 643 (" *Dunn V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13

19 (".....,*fn8 The Constitutional right to travel is "among the rights and privileges of
20 National citizenship," *Twining v. New Jersey*, 211 U.S. 78, 97, 29 S. Ct. 14, 53 L. Ed.
21 97 (1908), and finds its base not only in the fourteenth amendment, but **in the Consti-**
22 **tution as a whole.** *Griffin v. Breckenridge*, 403 U.S. at 105, 91 S. Ct. 1790; *Shapiro v.*
23 *Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969); *United States v.*
24 *Guest*, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966).") *McLellan v. Missis-*
25 *sippi Power & Light Co.*, 545 F.2d 919 (5th Cir. 01/20/1977)

26 (".....The defendant's right to be sued in accord with the statutory terms has long
27 **been construed to be valuable and substantial,** not a mere technical right. *Jefferson v.*
28 *Magee*, 205 So. 2d 281 (Miss. 1967); *Crosby v. Robertson*, 243 Miss. 420, 137 So.
29 2d 916 (1962); *Long v. Patterson*, 198 Miss. 554, 22 So. 2d 490 (1945); and *Trolio v.*
30 *Nichols*, 160 Miss 611, 133 So. 207 (1931). The question actually presented is
31 whether a plaintiff may intentionally bypass a mandate of the statute in order to in-
32 voke a later provision therein. We think it cannot because **statutes must be construed**
33 **in their entirety giving consideration to the words used as well as the purpose the leg-**
34 **islature sought to accomplish by the enactment.** *Aikerson v. State*, 274 So. 2d 124
35 (Miss. 1973).....To hold otherwise would overlook a salient rule of construction
36 that all parts of a statute are to be considered together and given effect if possible.
37 *Mississippi Public Service Comm'n. v. City of Jackson*, 328 So. 2d 656 (Miss. 1976),
38 and *McCaffrey's Food Market, Inc. v. Mississippi Milk Comm'n.*, 227 So. 2d 459
39 (Miss. 1969), wherein we stated: . . . **it is also a rule of law** that in its effort to con-

1 **strue a statute the courts must** seek to ascertain the legislative intent of the statute in
2 question as a whole, taking in consideration each provision of the statute on the entire
3 subject. . . . (227 So. 2d at 463) It is also the duty of a court to support a construction
4 which would purge the legislative purpose of any invalidity, absurdity or unjust in-
5 equality. *Quitman County v. Turner*, 196 Miss. 746, 18 So. 2d 122 (1944), and the
6 cases cited therein”) *CHRISTINE GILLARD AND MARIETTA GREEN v.*
7 *GREAT SOUTHERN MORTGAGE & LOAN CORPORATION*, 354 So. 2d 794
8 (Miss.02/01/1978) No. 49859 (....it must be remembered that "Congress acts . . .
9 against the background of the total corpus juris of the states. . . .") *Wallis v. Pan*
10 *American Petroleum Corp.*, 384 U.S. 63, 68 (1966)

11 The subject is regulation and general revenue taxation of commerce and instrumentali-
12 ties of commerce. There has to be factual sufficiency of a for profit activity affecting a
13 public interest for general revenue taxation and regulation statutes to be applied.

14 ((541)...."Property" cannot be defined by the procedures provided for its deprivation
15 any more than can life or liberty.") *Cleveland Board Education V. Loudermill Et Al.*,
16 470 U.S. 532, (U.S. 03/19/1985) No. 83-1362

17 ("The Framers gave Congress the power to regulate commerce, not to compel it, and
18 for over 200 years both our decisions and Congress's actions have reflected this un-
19 derstanding. There is no reason to depart from that understanding now.....But we
20 have never permitted Congress to anticipate that activity itself in order to regulate in-
21 dividuals not currently engaged in commerce.....[*attacking the right to travel in the*
22 *usual conveyance*] however, does not regulate existing commercial activity. It instead
23 compels individuals to become active in commerce by purchasing a product, on the
24 ground that their failure to do so affects interstate commerce.....[*prosecution of*]
25 those..... not currently engaged in any commercial activity..... is fatal to the Gov-
26 ernment's effort to "regulate...") *National Federation Of Independent Business Et Al.*
27 *V. Sebelius, Secretary Of Health And Human Services, Et Al.*, 132 S. Ct. 2566 (2012)
28 No. 11-393,.

29 ((Page 141 U. S. 57)..." It has frequently been laid down by this court that the power
30 of congress over interstate commerce is as absolute as it is over foreign commerce...
31 (58).....We have repeatedly decided that a state law is unconstitutional and void
32 which requires a party to take out a license for carrying on interstate commerce, no
33 matter how specious the pretext may be for imposing it.") *Crutcher V. Common-*
34 *wealth Of Kentucky*. No. 828, 141 U.S. 47 (1891), (11 S.Ct. 851, 35 L.Ed. 649)

35 ("But, when no trade is carried on, or intended to be carried on, under the license, it
36 is clear that the license is a fraud upon the State law, if that law is in other respects
37 valid.") *Gibbons v. Ogden*, 22 U.S. 1, (U.S. 3/2/1824).

38 The state cannot compel fraud, the state cannot compel licensing if no commerce is in
39 view, and to demand a license to merely use the roads is to resurrect the Dred Scott deci-

sion describing badges and incidents of slavery requiring a license to be on the public roads. Commerce licensing was entirely separate from and not in view and that as a badge and incident of slavery licensing was required to merely be on the roads.

(“There are few such rights (we have hitherto recognized only the Thirteenth Amendment right to be free from involuntary servitude, *United States v. Kozminski*, 487 U.S. 931, 942, 101 L. Ed. 2d 788, 108 S. Ct. 2751 (1988), and, in the same Thirteenth Amendment context, the right of interstate travel, see *United States v. Guest*, supra, at 759, n. 17).”) *Jayne Bray V. Alexandria Women's Health Clinic Et Al.*, 113 S. Ct. 753 (U.S. 01/13/1993) No. 90-985

((130)Enough has already been said to show that, when private property is devoted to a public use, it is subject to public regulation.... (132) Certainly, if any business can be clothed "with a public interest, and cease to be juris privati only," this has been. It may not be made so by the operation of the Constitution of Illinois or this statute, but it is by the facts. (147)“When the privilege ends, the power of regulation ceases...”) *Munn v. Illinois*, 94 U.S. 113 (1876).

(“ The Framers gave Congress the power to **regulate** commerce, not to **compel** it,...”) *NATIONAL FEDERATION OF INDEPENDENT BUSINESS, et al., Petitioners (No. 11-393) v. KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES*, 132 S. Ct. 2566, 2596 Likewise the “STATE” cannot compel commerce. (“....no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit ...”) *Calder v. Bull*, 3 Dallas 386 (1798)

((474) “.... commerce, in the constitutional sense,... embraces shipment...and...to carriers engaged in interstate commerce, certainly insofar as so engaged, and the instrumentalities by which such commerce is carried on --which has been apparent ever since the decision in *Gibbons v. Ogden*, 9 Wheat. 1, and which has not since been open to question.... It may not be doubted that the equipment..... engaged, incommerce,....., are instruments of such commerce. From this it necessarily follows that such..... are embraced within the governmental power of regulation...”) *Interstate Commerce Commission V. Illinois Central Railroad Company.*, 215 U.S. 452 (U.S. 01/10/1910) No. 233

Prosecution has not provided factual sufficiency of Tracy engaging in for profit activity affecting a public interest therefore cannot prove beyond a reasonable doubt that Tracy is required to pay a Mississippi general revenue privilege tax applied to an instrumentality of commerce, ie motor vehicle. MS Code § 63-21-5 defines motor vehicle as an automobile, truck... required to pay a (general revenue) privilege tax applied to commerce and instrumentalities of commerce. Therefore, in order for Tracy to be “operating a motor vehicle” factual sufficiency must be shown of a for profit activity affecting a public inter-

1 est requiring payment of a privilege tax.

2 MS Code § 63-1-33(3)(c) requires proof of liability insurance in order to even obtain a
3 driver's license. Insurance companies do not provide insurance without a driver's license
4 and proof of registration. A driver's license is required before a title and tag are issued
5 (See Exhibit Application for Title). The driver's license cannot be issued unless someone
6 takes the driving test in an insured and registered motor vehicle. A logical impossibility to
7 comply with the law as written. Tracy has no known legal duty to pay a privilege tax as
8 she is not engaged in for profit activity affecting a public interest. The State of Mississippi
9 or any state has not provided her notice of a duty or any assessment she owes and will-
10 fully and unlawfully failed to pay a Mississippi or any State general revenue privilege tax
11 and prosecution has not proven beyond a reasonable doubt the essential elements of priv-
12 ilege.

13 Tracy argues that the State of Mississippi has mandated her to have proof of insurance
14 but insurance companies are not mandated to provide services to Tracy. Every insurance
15 company person Tracy questioned stated they cannot provide insurance without either
16 a driver's license (which requires the payment of a privilege tax) or the registration
17 (which is the payment of a privilege tax).

18 MS Code § 83-11-1(1)(b) provides insurance companies may cancel a policy should
19 the policy holders license be suspended or revoked. Therefore, should the policy holder
20 not have a valid driver's license they cannot hold valid insurance. This means that travel-
21 ing without a valid license to do commerce on the roads is permission to the insurance
22 companies to deny coverage.

23 There is no state statute which provides the requirements for obtaining insurance
24 therefore it is unknown what is legally necessary in order to obtain insurance. The Legis-
25 lature of the State of Mississippi has left it to the insurance companies discretion to
26 choose what they wish to require in order to approve a policy to anyone.

27 Prosecution has not provided any facts or evidence of Tracy using the roads for profit
28 affecting a public interest on March 24th 2017. Therefore, prosecution cannot prove be-
29 yond a reasonable doubt that Tracy has a known legal duty to pay a privilege tax there-
30 fore proving that she was in fact "operating a motor vehicle". Without proof beyond a
31 reasonable doubt that Tracy is liable to pay a privilege tax there is no known legal duty

1 to obtain automobile insurance.

IV

2 Pursuant to MS Code § 63-9-21(3)(c) the traffic tickets shall include information that
3 will constitute a complaint charging the offense. The traffic tickets charge Tracy with
4 NDR codes found in the appendix a of 23 CFR Ch 3 Sec 1327. Prosecution has
5 prosecuted Tracy on merely recited charges that are not set forth within the complaint
6 and do not exist within 23 CFR Ch 3 Sec 1327.

7 On March 24th 2017 Bree Lucas issued 3 traffic citations numbered 309048, 309049
8 and 309050. Each of these tickets had offenses printed on the face of them that match
9 NDR codes which are found in appendix a of 23 CFR Ch. 3 Sec 1327. The State of Mis-
10 sissippi became a participant of the NDR under 49 USC 30303 and MS Code § 63-1-211
11 provides that the NDR was established under 49 USC 30302. The NDR is only refer-
12 enced in Mississippi code once which is within MS Code § 63-1-211 which is Commer-
13 cial. (SEE EXHIBIT APPENDIX A and Exhibit Tickets)

14 The NDR codes do not impose a duty to pay a Mississippi general revenue privilege
15 tax. The NDR codes are not penalty provisions and impose no duty.

16 ((486)...”The omission cannot be supplied by intendment or implication, and the
17 charge must be made directly, and not inferentially, or by way of recital..”) *United*
18 *States v. Hess*, 124 U.S. 483

19 They are mere record keeping provisions used for convictions already had. Tracy ar-
20 gues that this instant suit is a bill of pains and penalties as the codes are merely for con-
21 victions already had and there are no rules for challenging a misdemeanor traffic ticket.
22 Mississippi Rules of Criminal Procedure 3.1 provides that misdemeanor traffic violations
23 are governed by statute e.g., the Uniform Traffic Ticket Law, MS Code § Ann 63-9-21
24 and not these rules and that they are not affected by the criminal rules.

25 "As to the 'due process of law' that is required by the Fourteenth Amendment, it is
26 perfectly well settled that a criminal prosecution in the courts of a State, based upon a
27 law not in itself repugnant to the Federal Constitution, and conducted according to
28 the settled course of judicial proceedings as established by the law of the State, so long
29 as it includes notice, and a hearing, or an opportunity to be heard, before a court of
30 competent jurisdiction, according to established modes of procedure is 'due process'

1 in the constitutional sense." Moore Et Al. V. Dempsey, 43 S. Ct. 265, 261 U.S. 86

2 The traffic tickets cited Tracy into court on convictions already had. The sworn state-
3 ment swears to the truth that the convictions were already had, citing NDR record keep-
4 ing provisions found in Appendix A of 23 CFR Ch 3 Sec. 1327, which are only valid for
5 convictions already had or for matters already concluded. The conviction from the mu-
6 nicipal court for which Tracy had to pay to appeal to the County court was a sentencing
7 trial to determine fines and penalties and not whether Tracy had a known legal duty to
8 pay a general revenue privilege tax, to the State of Mississippi, of which she breached.
9 (See Exhibit Appendix A) This is the exercise of congressional commerce powers. (See
10 Exhibit 23 CFR). As the court rules and statutes are written and their practicable appli-
11 cation, Tracy is denied due process.

12 ((24))A bill of attainder is a legislative act which inflicts punishment without a judicial
13 trial. If the punishment be less than death, the act is termed a bill pains and penalties.
14 Within the meaning of the Constitution, bills of attainder include bills of pains and
15 penalties" United States V. Lovett, 66 S. Ct. 1073, 328 U.S. 303

16 The traffic tickets fail to properly allege a crime as they allege Federal record keeping
17 provisions for actions already had and do not constitute a complaint. The Municipal
18 Court and the County Court call this instant suit Criminal therefore Tracy has reason to
19 believe that the complaint is a criminal complaint. The criminal complaint do not set out
20 facts, do not allege penalty provisions, do not state any facts to the essential elements of
21 the allegations and are not as specific as an indictment.

22 Prosecution merely recited the State penalty provisions MS Code § 27-19-31, MS Code
23 § 63-1-5 and MS Code § 63-15-4 without any accompanying affidavit and without the
24 main statute or ordinance that those penalties aid in the enforcement of. There is no
25 sworn complaint alleging these codes. Tracy is not in receipt of factual sufficiency
26 amounting to authenticated evidence to the essential elements of those penalty provisions.

27 A criminal complaint which does not set out facts sufficient to constitute a crime is
28 void, and does not confer jurisdiction upon the magistrate taking it...All of the ele-
29 ments of the crime must be stated... A criminal complaint being a statement of facts,
30 should be at least as specific as an indictment. People State Illinois Ex Rel. McNichols
31 V. Pease, 28 S. Ct. 58, 207 U.S. 100

32 Upon motion and verbally before any trial occurred Tracy requested the nature and

1 cause of the accusations. Prosecution only provided a copy of the merely recited penalty
2 provisions.

3 ((487)...". Undoubtedly the language of the statute may be used in the general de-
4 scription of an offense, but it must be accompanied with such a statement of the facts
5 and circumstances as will inform the accused of the specific offense, coming under the
6 general description, with which he is charged."It is an elementary principle of
7 criminal pleading that where the definition of an offense, whether it be at common
8 law or by statute, includes generic terms, it is not sufficient that the indictment shall
9 charge the offense in the same generic terms as in the definition, but it must state the
10 species -- it must descend to particulars..... For this facts are to be stated, not conclu-
11 sions of law alone..... (488).... Such particulars are matters of substance, (489) and
12 not of form, and their omission is not aided or cured by the verdict.") *United States v.*
13 *Hess*, 124 U.S. 483

14 It has been held that the facts to the essential elements of the offense, informs the ac-
15 cused of the nature and cause of the accusation. Tracy could not form a responsive plea
16 which resulted the Municipal court over Tracy's objection entering a plea of not guilty.
17 The Mississippi Abstract that was provided by Andrew Stuart on February 5th 2018
18 stated that **the disposition in the Municipal court and the plea entered were both guilty.**

19 "The words of the indictment directly and without ambiguity disclosed all the ele-
20 ments essential to the commission of the offense charged, and, therefore, within the
21 meaning of the Constitution and according to the rules of pleading, the defendant was
22 informed of the nature and cause of the accusation against him. *United States v. Sim-*
23 *mons*, 96 U.S. 360, 362; *United States v. Carll*, 105 U.S. 611; *Blitz v. United States*
24 *153 U.S. 308, 315 Burton V. United States., 26 S. Ct. 688, 202 U.S. 344 (U.S.*
25 *05/21/1906)*

26 "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public
27 trial, by an impartial jury of the State and district wherein the crime shall have been
28 committed, which district shall have been previously ascertained by law, and to be in-
29 formed of the nature and cause of the accusation; to be confronted with the witnesses
30 against him; to have compulsory process for obtaining witnesses in his favor, and to
31 have the Assistance of Counsel for his defence." *Strickland V. Washington*, 104 S. Ct.
32 2052, 466 U.S. 668 (U.S. 05/14/1984)

33 "That no person shall be deprived of life, liberty, or property without due process of
34 law; that private property shall not be taken for public use without just compensa-
35 tion; that in all criminal prosecutions the accused shall enjoy the right to a speedy and
36 public trial, to be informed of the nature and cause of the accusation, to be con-
37 fronted with the witnesses against him, to have compulsory process for obtaining wit-
38 nesses in his favor, and to have the assistance of counsel for his defense; that excessive

1 bail shall not be required, nor excessive fines imposed, nor cruel and unusual punish-
2 ment inflicted; that no person shall be put twice in jeopardy for the same
3 offense" 1 Public Laws of the Philippine Commission, p. LXVI. Green V. United
4 States, 78 S. Ct. 221, 355 U.S. 184 (U.S. 12/16/1957)

5 The tickets are fatally flawed as they charge no offense, contain federal record keeping
6 provisions and do not constitute a complaint. The tickets do not inform Tracy of the na-
7 ture and cause of the accusations against her which goes directly against procedural due
8 process.

9 The constitutional right to be informed of the nature and cause of the accusation enti-
10 tles the defendant to insist that the charging instrument apprise him of the crime charged
11 with such reasonable certainty that he can make his defense. No criminal complaint is
12 sufficient if it does not allege all of the ingredients that constitute the crime. Where the
13 language of a statute is, according to the natural import of the words, fully descriptive of
14 the offense, it is sufficient if the criminal complaint follows the statutory phraseology.
15 The state cannot come up with a main statute empowering the court or factual suffi-
16 ciency that the statute applies to Tracy. The facts necessary to bring the case within the
17 statutory definition must also be alleged. The right to notice of accusation is so funda-
18 mental a part of procedural due process that the States are required to observe it. They
19 have merely recited penalty provisions with no facts and are relying on mere presumptive
20 conclusions. It is not possible to plea when there are no facts to argue. Where the ele-
21 ments of the crime have to be ascertained by reference to the common law or to other
22 statutes, it is not sufficient to set forth the offense in the words of the statute.

23 Tracy argues that because the tickets allege NDR codes and the NDR was established
24 under federal commerce powers this suit is in fact under federal commerce powers. The
25 NDR participation is by signed agreement between the Secretary of Transportation and
26 the Governor and other state officials for purposes of receiving Federal Highway funding.
27 The NDR was enacted by Congress. The Social Security Number was enacted by Con-
28 gress. The NHTSA was enacted by Congress. The Dept of Transportation was enacted by
29 Congress. The FMCSA was enacted by Congress.

30 49 USC 30302 mandates the DMV to query into the NDR prior to issuing driver's li-
31 censes which shows that the driver's license also falls under federal commerce powers.
32 Tracy is not in receipt of a State B51 No DI or a D36 No Insurance as sworn to on the

1 face of the Traffic Ticket. Bree Lucas testified under oath that she did not recall a State
2 B51. See Exhibit B51.

3 ((206)“....Congress may control the State laws so far as it may be necessary to con-
4 trol them for the regulation of commerce.(210) ..That regulation is designed for
5 the entire result,.... It produces a uniform whole...”) (67)For if it be not a regulation
6 of commerce, Congress has no concern with it. Gibbons V. Ogden, 22 U.S. 1 (U.S.
7 3/2/1824)

8 Neither the State of Mississippi or Congress have the power to control the right to
9 travel in the usual and ordinary conveyance of the day. They have the power to control
10 commerce. Tracy is not engaged in interstate or intrastate commerce and does not use the
11 roads for livelihood or gain.

12 “At the outset, it cannot be questioned that the public generally has an absolute right
13 to use the public roads and highways in a customary and reasonable manner so long
14 as they are not properly closed to public use by legislative sanction.” *Ward Hudson,*
15 *et al V Farrish Gravel Company, Inc.*, 279 So. 2d 630 (Miss. 06/29/1973) No. 47,
16 187

17 “The right to travel is a part of the 'liberty' of which the citizen cannot be deprived
18 without due process of law under the Fifth Amendment.” *Kent v. Dulles*, 357 U.S.
19 116 (1958)

20 Prosecution has not proven beyond a reasonable doubt that a State of Mississippi B51
21 or D36 exists within the state of Mississippi and has not disproved the fact that each and
22 every offense printed on the face of the ticket matches the NDR codes found in appendix
23 a of 23 CFR Ch. 3 sec 1327. Prosecution has failed to prove the facts to the essential ele-
24 ments of willfulness as sworn to on each ticket which requires that Tracy knowingly and
25 intentionally breached a known legal duty see *Cheek v. United States*.

V

26 Due process requires prosecution to prove the facts to each essential element of the
27 charges beyond a reasonable doubt. Tracy has no intent to breach a known legal duty
28 and intends to fulfill each duty of which she owes. The prosecution has not provided
29 factual sufficiency to the essential elements of the terms of any state defined charge.

30 Tracy was convicted on charges not made. The merely recited penalty statutes MS

Code § 63-1-5, MS Code § 63-15-4 and MS Code § 27-19-31 do not have any affidavit or complaint stating with particular facts and circumstances to elements of the terms in statute. The reason there is no affidavit of complaint with the state code recitals is because the terms require commerce to be proven before a general revenue tax is owed.

"No essential element of the crime can be omitted without destroying the whole pleading. The omission cannot be supplied by intendment, or implication, and the charge must be made directly and not inferentially, or by way of recital." United States V. Hess., 8 S. Ct. 571, 124 U.S. 483

These penalty statutes aid in the enforcement of some main statute which Tracy is not in receipt of. Each state code recital includes operating a motor vehicle. As previously argued, MS Code § 63-21-5 provides that an automobile which is required to pay the privilege tax is a motor vehicle. If no commerce is involved there are obviously a privilege tax is not required therefore not required to register as a self propelled instrumentality of commerce also known as a motor vehicle.

(" It is stated in 12 Am. Jur., Constitutional Law, Section 481, p. 151 to 156, that: "The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded and, furthermore, must be based upon substantial distinctions. * * * Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended." It is further stated in this text that: The precept most often employed states that a classification to be valid must always rest on a difference which bears a fair, substantial, natural, reasonable and just relation to the object, act, or persons in respect to which it is proposed. "The rule is similarly stated in 16 C.J.S., Sec. 520, pp. 1044 and 1045.) *Walker, Et Al. V. Board Of Supervisors Of Monroe County, Mississippi*, 224 Miss. 801 (Miss.06/13/1955) No. 39819

("The enumeration presupposes something not enumerated,...") *Gibbons v. Ogden* 22 U.S. 1, 195.

MS Code § 27-19-31 is a penalty provision for willfully failing to pay a privilege license which is required if someone is engaged in commerce. In order for the prosecution to make out its prima facie case it must prove beyond a reasonable doubt that Tracy breached a known legal duty to pay a privilege tax therefore was in fact operating a motor vehicle ie instrumentaility of commerce.

As previously argued, a privilege tax is a tax on for profit activity affecting a public in-

1 terest.

2 50 C.J Pg. 403 Privilege Tax. An excise tax; a tax on certain kinds of business for the
3 carrying on of which licenses are required.

4 50 C.J Pg. 402 Privilege. A special right... also, the exercise of an occupation or busi-
5 ness which requires a license from some proper authority, designated by general law,
6 and not open to all, or any, without such license; whatever business, pursuit, occupa-
7 tion, or vocation affecting the public that the legislature chooses to declare and tax as
8 such.

9 Phillips v. Lewis, 3 Shann. Cas. 231, as quoted earlier provided the elements of the def-
10 inition of privilege. Western Union Telegraph Company v. State Kansas Ex Rel Coleman,
11 30 S. Ct. 190, 216 U.S. 1 and Allen v. Pullman's Palace Car Company, 24 S. Ct. 39, 191
12 U.S. 171 clearly state that any occupation, business, employment or the like, affecting the
13 public, may be classed and taxed as a privilege. The elements of privilege is plain and
14 cannot be evaded. Due Process requires that prosecution provide facts to the essential ele-
15 ments of privilege as this entire suit revolves around the privilege of operating a motor
16 vehicle. Did Tracy breach a known legal duty to pay a prvivilege tax? Was Tracy using
17 the roads for profit affecting a public interest?

18 The tickets are the prosecutions only evidence and allege NDR codes found in 23 CFR
19 Ch. 3 Sec. 1327 Appendix A, which codes do not impose a duty, are not penalties and do
20 not inform Tracy of the nature and cause of the accusation. The tickets do allege Tracy
21 willfully committed the offense of..... This means willfullness was a required element of
22 the conviction which was not proven beyond a reasonable doubt.

23 MS Code § 27-19-31 also requires facts to the essential elements of willfullness as it is
24 a penalty provision for "willfully failing to pay a privilege license tax".

25 to reaffirm the rule that in suits to recover penalties, strictly statutory, the proof
26 of wilfulness or wantonness, or the equivalent thereto, is nonessential only in those
27 cases where the penalty prescribed by the statute is a percentage of the normal tax or
28 is not greatly in excess of the amount thereof, and that in all such cases where the
29 amount of penalties sought to be recovered are greatly in excess of the normal tax im-
30 posed by law, there can be no recovery of the same without proof of a wilful, wanton
31 or reckless failure of the defendant to pay the normal tax or other statutory liability at
32 the time the same becomes due and payable. Mercury Transport v. Vehicle Comm.,
33 21 So. 2d 25

34 “to prove "willfulness" the Government must prove the voluntary and intentional vi-

olation of a known legal duty, a burden that could not be proved by showing mistake, ignorance, or negligence." *Cheek v. United States*, 111 S. Ct. 604, 498 U.S. 192 (U.S. 01/08/1991)

In *Winship* we held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358

Prosecution failed to prove each and every essential element beyond a reasonable doubt and has failed to inform Tracy of the nature and cause of the accusations. Specifically has failed to set forth facts to the elements of the crimes and has failed to provide factual sufficiency that the merely recited penalty provisions or the NDR codes found in 23 CFR Ch 3 Sec 1327 as cited on the tickets apply to Tracy. Tracy is not in receipt of the main statute or ordinance empowering the court and the factual sufficiency it applies to her. The prosecution has not proven its prima facie case beyond a reasonable doubt.

CONCLUSION

Wherefore, Tracy Arnold moves this court orders cause numbers 2017-116, 2017-117 and 2017-118 to be dismiss without prejudice for insufficient evidence and lack of jurisdiction.

Tracy Arnold

Witnesses

as:

"... .. (A)t the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." Deuteronomy 19:1