



2. Notwithstanding the harmless and constitutionally protected nature of Ms. Gilliam’s speech, on May 25, 2021, the Tennessee Department of Revenue (the “Department”) sent Ms. Gilliam a threat letter summarily revoking her longtime vanity plate on the specific basis that it had “been deemed offensive.” *See* **Ex. 2**. In pertinent part, the Department’s threat letter to Ms. Gilliam states as follows:

**Re: Personalized License Plate 69PWNDU**

Dear Leah,

The Tennessee Department of Revenue (the “Department”) is writing this letter to notify you that the above-referenced personalized plate has been deemed offensive. Pursuant to Tenn. Code Ann. § 55-5-117(a)(1) (2012) and Tenn. Code Ann. § 55-4-210(d)(2) (2012), the Department may revoke a personalized registration plate that has been deemed offensive to good taste or decency. Therefore, the Department hereby revokes the above-referenced plate.

You may apply for a different personalized plate or request a regular, non-personalized plate to replace the revoked plate. The law requires you to immediately return the revoked plate. Tenn. Code Ann. § 55-5-119(a) (2012). . . . You will be unable to renew your vehicle registration until this plate has been returned.

*Id.*

3. Beyond prohibiting Ms. Gilliam from renewing her vehicle registration, *see id.*, the Department’s summary revocation of Ms. Gilliam’s vanity plate exposes her to the immediate threat of criminal liability—a fine and up to 30 days in jail—if she does not acquiesce to the Department’s pre-hearing prior restraint against her constitutionally protected speech. *See* Tenn. Code Ann. § 55-5-120(a) (“It is a Class C misdemeanor for any person to violate any of the provisions of chapters 1-6 of this title unless such violation is by chapters 1-6 of this title or other law of this state declared to be a felony.”).

4. The Department’s asserted authority to revoke Ms. Gilliam’s constitutionally protected vanity plate arises from Tenn. Code Ann. § 55-4-210(d)(2)—a

facially unconstitutional statute that expressly discriminates on the basis of viewpoint. *See id.* (“The commissioner shall refuse to issue any combination of letters, numbers or positions that may carry connotations offensive to good taste and decency or that are misleading.”).

5. Governmental discrimination on the basis of viewpoint is forbidden in any forum. *See Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017). And although the sole basis for the Department’s decision to revoke Ms. Gilliam’s vanity plate is that it “has been deemed offensive,” *see Ex. 2*, the U.S. Supreme Court has clearly established that: “Giving offense is a viewpoint.” *Matal*, 137 S. Ct. at 1763.

6. Based on the U.S. Supreme Court’s 2017 holding in *Matal*, courts in multiple jurisdictions have recently invalidated laws that are materially indistinguishable from Tenn. Code Ann. § 55-4-210(d)(2) because they unconstitutionally discriminated based on viewpoint. *See, e.g.*, Order Granting Plaintiffs’ Motion for Summary Judgment and Denying Defendant’s Motion for Summary Judgment at 8, *Ogilvie v. Gordon*, No. 4:20-cv-01707-JST (N.D. Cal. Nov. 24, 2020), ECF No. 54 (“the Court holds that California’s prohibition on personalized license plate configurations ‘that may carry connotations offensive to good taste and decency’ constitutes viewpoint discrimination under *Tam* and *Brunetti*.”); *Carroll v. Craddock*, 494 F. Supp. 3d 158, 170 (D.R.I. 2020) (“the Court finds that Mr. Carroll has satisfied the criteria for issuance of a preliminary injunction on his claims that the R.I.G.L. § 31-3-17.1 is unconstitutional both as applied in this case and on its face as overbroad and void for vagueness.”). *See also Kotler v. Webb*, No. CV 19-2682-GW-SKX, 2019 WL 4635168 (C.D. Cal. Aug. 29, 2019).

7. Several other pre- and post-*Matal* decisions—which further emphasize the unconstitutionally arbitrary and discriminatory enforcement that such a statute

permits—are in accord. *See, e.g., Lewis v. Wilson*, 253 F.3d 1077 (8th Cir. 2001); *Hart v. Thomas*, 422 F. Supp. 3d 1227 (E.D. Ky. 2019); *Montenegro v. New Hampshire Div. of Motor Vehicles*, 166 N.H. 215, 225, 93 A.3d 290, 298 (2014) (“We conclude that the restriction in Saf–C 514.61(c)(3) prohibiting vanity registration plates that are ‘offensive to good taste’ on its face ‘authorizes or even encourages arbitrary and discriminatory enforcement,’ *see MacElman*, 154 N.H. at 307, 910 A.2d 1267, and is, therefore, unconstitutionally vague.”); *Matwyuk v. Johnson*, 22 F. Supp. 3d 812, 826 (W.D. Mich. 2014) (“the ‘offensive to good taste and decency’ language grants the decisionmaker undue discretion, thereby allowing for arbitrary application.”).

8. Given the above context, Ms. Gilliam is: (a) being unlawfully ordered to cease displaying her constitutionally protected speech; (b) on a summary, pre-hearing basis; (c) under threat of immediate civil consequences and *criminal* liability; and (d) based upon authority conferred by a statute that is facially unconstitutional on at least two independent grounds. Ms. Gilliam has filed this action—which raises claims that cannot be raised in any administrative proceeding—accordingly. She also seeks temporary relief enjoining the Defendants from enforcing Tenn. Code Ann. § 55-4-210(d)(2) against her pending the conclusion of judicial review.

## **II. PARTIES**

9. Plaintiff Leah Gilliam is a citizen of Tennessee and a resident of Davidson County, Tennessee. Ms. Gilliam is an astronomy buff and a gamer, and until May 2021, she had displayed the vanity plate “69PWNDU” on her car without issue for more than a decade.

10. Defendant David Gerregano is the Commissioner of the Tennessee Department of Revenue, the governmental agency responsible for unconstitutionally

revoking Ms. Gilliam’s license plate on a summary basis due to the viewpoint she expressed. Defendant Gerregano is sued in his official capacity with respect to the Plaintiff’s claims for injunctive and declaratory relief, and he is sued in his individual capacity with respect to the Plaintiff’s claim for damages.

11. Defendant Herbert H. Slatery III is the Attorney General and Reporter for the State of Tennessee. His duties include a general mandate “[t]o defend the constitutionality and validity of all legislation of statewide applicability,” *see* Tenn. Code Ann. § 8-6-109(b)(9), and he is entitled to be heard in and made a party to this proceeding pursuant to Tenn. Code Ann. § 29-14-107(b). As the Attorney General and Reporter for the State of Tennessee, Defendant Herbert H. Slatery III is sued in his official capacity only regarding the Plaintiff’s claims for declaratory relief.

### **III. JURISDICTION, AUTHORITY, AND VENUE**

12. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 1-3-121; Tenn. Code Ann. § 29-14-102, *et seq.*; and 42 U.S.C. § 1983.

13. This Court is vested with the authority to issue a declaratory judgment and an injunction with the force and effect of a final decree pursuant to Tenn. Code Ann. § 29-14-102, Tenn. Code Ann. § 29-1-106, Tenn. Code Ann. § 1-3-121, and 42 U.S.C. § 1983.

14. As the jurisdiction where the Defendants reside and where the Plaintiff’s injury occurred, venue is proper in this Court pursuant Tenn. Code Ann. § 20-4-101(a).

### **IV. FACTUAL ALLEGATIONS**

15. Approximately a decade ago, the Plaintiff applied for and then received a personalized plate—commonly known as a “vanity” plate—from the Tennessee Department of Revenue.

16. The specific combination of characters that the Plaintiff applied for,

received, and then displayed—“69PWNDU”—combines the year of the moon landing (1969) with a common gaming term (“pwn”<sup>1</sup>).

17. Upon receiving her vanity plate, Ms. Gilliam harmlessly displayed her vanity plate without issue for more than a decade preceding this action.

18. To Ms. Gilliam’s knowledge, her vanity plate has never caused anyone harm. To the contrary, members of the public enjoy seeing it displayed.

19. On May 25, 2021, the Vehicle Services Division of the Tennessee Department of Revenue mailed Ms. Gilliam a threat letter summarily revoking her vanity plate on a single specified ground: that it “has been deemed offensive.” *See Ex. 2.*

20. The Department’s threat letter to Ms. Gilliam makes clear that her vanity plate was revoked immediately, summarily, and before hearing, stating without ambiguity that: “the Department hereby revokes the above-referenced plate.”

21. Ms. Gilliam has only been permitted the opportunity to challenge the Department’s revocation on a post-deprivation basis, which will not result in a hearing and ultimate adjudication until August 2021 at the earliest. *See Ex. 3.*

22. In the interim, Ms. Gilliam is subject to immediate civil consequences, including that she “will be unable to renew [her] vehicle registration until [her] plate has been returned.” *Id.*

23. Ms. Gilliam is also subject to the immediate threat of criminal prosecution if she does not comply with the Department’s summary revocation. *See Tenn. Code Ann. § 55-5-120(a)* (“It is a Class C misdemeanor for any person to violate any of the provisions of chapters 1-6 of this title unless such violation is by chapters 1-6 of this title or other law

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<sup>1</sup> Pwn, Dictionary.com (*last visited* June 28, 2021), <https://www.dictionary.com/browse/pwn> (defining “pwn” as: “Slang. to totally defeat or dominate, especially in a video or computer game[.]”)

of this state declared to be a felony.”).

24. The Defendant Commissioner’s summary revocation of Ms. Gilliam’s vanity plate arises from three interconnected statutes:

First, Tenn. Code Ann. § 55-4-210(d)(2) obligates the Defendant Commissioner to refuse to issue any vanity plate “that may carry connotations offensive to good taste and decency[.]” *See id.* (“The commissioner shall refuse to issue any combination of letters, numbers or positions that may carry connotations offensive to good taste and decency or that are misleading.”).

Second, even after being issued, Tenn. Code Ann. § 55-5-117(a)(1) permits summary, pre-hearing revocation of a vanity plate “[w]hen the department is satisfied that the registration or that the . . . plate . . . was . . . erroneously issued[.]” *See id.*

Third, Tenn. Code Ann. § 55-5-119(a) provides that a revocation decision is immediate and effective even before hearing. (“Whenever the department as authorized hereunder cancels, suspends, or revokes the registration of a . . . plate or plates, . . . the owner or person in possession of the same shall immediately return the evidence of registration, title or license so cancelled, suspended, or revoked to the department.”).

25. Ms. Gilliam has challenged the Department’s revocation decision and demanded a hearing. She will not even be afforded a hearing, however, until August 11, 2021. *See Ex. 3.*

26. By law, Ms. Gilliam is not permitted to raise claims of facial unconstitutionality in her administrative proceeding, even though Tenn. Code Ann. § 55-4-210(d)(2) is facially unconstitutional. Neither can Ms. Gilliam raise original tort claims or claims for damages, including under 42 U.S.C. § 1983, in any future petition for judicial review of an administrative order.

## **V. CAUSES OF ACTION**

### **1. Violation of the First and Fourteenth Amendments**

(Content- and Viewpoint-Discrimination)

27. The Plaintiff reincorporates and realleges the foregoing allegations as if fully set forth herein.

28. Because it requires the Defendant Commissioner and his Department to refuse to issue vanity plates “that may carry connotations offensive to good taste and decency,” Tenn. Code Ann. § 55-4-210(d)(2) facially discriminates on the basis of both content and viewpoint; it is presumptively unconstitutional; and it contravenes the First and Fourteenth Amendments to the United States Constitution.

29. No compelling governmental interest supports Tenn. Code Ann. § 55-4-210(d)(2).

30. Tenn. Code Ann. § 55-4-210(d)(2) is not the least restrictive means of promoting any compelling governmental interest.

31. Personalized plates, including Ms. Gilliam’s, are not government speech.

32. By causing Ms. Gilliam to suffer a loss of her First Amendment freedoms, the Defendant Commissioner has caused Ms. Gilliam to suffer injury and damages that are subject to redress under 42 U.S.C. § 1983.

33. Because it is facially unconstitutional, Tenn. Code Ann. § 55-4-210(d)(2) should be declared unconstitutional, and its enforcement should be permanently enjoined under Tenn. Code Ann. § 29-14-102, Tenn. Code Ann. § 29-1-106, Tenn. Code Ann. § 1-3-121, and 42 U.S.C. § 1983.

### **2. Violation of Fourteenth Amendment**

(Unconstitutional Vagueness)

34. The Plaintiff reincorporates and realleges the foregoing allegations as if fully



set forth herein.

35. Because it requires the Defendant Commissioner and his Department to refuse to issue vanity plates “that may carry connotations offensive to good taste and decency,” Tenn. Code Ann. § 55-4-210(d)(2) is unconstitutionally vague.

36. Tenn. Code Ann. § 55-4-210(d)(2) fails to provide legally adequate notice of what it prohibits.

37. Tenn. Code Ann. § 55-4-210(d)(2) requires reasonable people to guess at its meaning.

38. Tenn. Code Ann. § 55-4-210(d)(2) denies fair notice of the standard of conduct for which a citizen is to be held accountable.

39. Tenn. Code Ann. § 55-4-210(d)(2) is an unrestricted delegation of power which leaves the definition of its terms to law enforcement officers.

40. Enforcement of Tenn. Code Ann. § 55-4-210(d)(2) turns upon subjective and unascertainable standards.

41. The Defendant Commissioner’s enforcement of Tenn. Code Ann. § 55-4-210(d)(2) is not subject to objective criteria.

42. *De gustibus non est disputandum* (“there is no disputing matters of taste”).

43. By causing Ms. Gilliam to suffer a loss of her First Amendment freedoms, the Defendant Commissioner has caused Ms. Gilliam to suffer injury and damages that are subject to redress under 42 U.S.C. § 1983.

44. Because it is unconstitutionally vague, Tenn. Code Ann. § 55-4-210(d)(2) should be declared unconstitutional and its enforcement should be permanently enjoined pursuant to Tenn. Code Ann. § 29-14-102, Tenn. Code Ann. § 29-1-106, Tenn. Code Ann. § 1-3-121, and 42 U.S.C. § 1983.

### **3. Violation of Fourteenth Amendment**

(Due Process)

45. The Plaintiff reincorporates and realleges the foregoing allegations as if fully set forth herein.

46. Ms. Gilliam has been subjected to a summary, *pre-hearing* suspension of her vanity plate pursuant to Tenn. Code Ann. § 55-4-210(d)(2), Tenn. Code Ann. § 55-5-117(a)(1), and Tenn. Code Ann. § 55-5-119(a).

47. Based on these statutes, “[t]he law requires [Ms. Gilliam] to immediately return the revoked plate.” *See Ex. 2.*

48. Ms. Gilliam “may request a hearing to challenge this revocation under the Uniform Administrative Procedures Act by submitting a written request for a hearing within ten days of the date of [the Department’s threat] letter,” *id.*, but in the interim, she has had her rights summarily terminated and has been deprived of her rights on a pre-hearing basis.

49. Ms. Gilliam’s vanity plate does not present an emergency that warrants summary, pre-hearing revocation, and continuing to display her vanity plate pending a hearing will not harm anyone.

50. Ms. Gilliam’s vanity plate has nonetheless been summarily revoked before providing Ms. Gilliam an opportunity to be heard, and she will not be afforded a hearing and final adjudication until at least August 2021. *See Ex. 3.*

51. The private interest affected by the Defendant Commissioner’s summary revocation of Ms. Gilliam’s vanity plate—Ms. Gilliam’s free speech—carries surpassing importance, because loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury.

52. With respect to revoking vanity plates based on the Defendant Commissioner's assertion that they do not comply with Tenn. Code Ann. § 55-4-210(d)(2), the risk of an erroneous deprivation prior to a hearing is high.

53. The Defendant Commissioner's revocation of Ms. Gilliam's vanity plate is, in fact, erroneous, unlawful, and unconstitutional.

54. The Defendants have no legitimate interest in summarily imposing pre-hearing prior restraints against speech that could not plausibly harm the public, and the public has fundamental rights to hear what others have to say.

55. The Defendant's summary, pre-hearing revocation of Ms. Gilliam's vanity plate subjects her to immediate civil consequences and the threat of criminal prosecution if she does not comply. *See* Tenn. Code Ann. § 55-5-120(a) ("It is a Class C misdemeanor for any person to violate any of the provisions of chapters 1-6 of this title unless such violation is by chapters 1-6 of this title or other law of this state declared to be a felony.").

56. Due process requires that the Defendants afford Ms. Gilliam a hearing before revoking her vanity plate, rather than affording her a hearing months afterward.

57. With respect to vanity plate revocations, Tenn. Code Ann. § 55-5-117(a)(1)'s and Tenn. Code Ann. § 55-5-119(a)'s provisions authorizing summary, pre-hearing revocations violate Ms. Gilliam's constitutional right to due process, and their continued enforcement should be enjoined.

## **VI. CLAIMS FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays:

1. That process issue and be served upon the Defendants, and that the Defendants be required to appear and answer this Complaint within the time required by law.

2. That this Court issue a temporary injunction that:
  - a. Enjoins the Defendant Commissioner from enforcing Tenn. Code Ann. § 55-4-210(d)(2) against the Plaintiff pending the conclusion of judicial review; and
  - b. Enjoins the Defendant Commissioner from summarily revoking the Plaintiff's vanity plate on a pre-hearing basis under Tenn. Code Ann. § 55-5-117(a)(1) and Tenn. Code Ann. § 55-5-119(a).
3. That this Court issue a permanent injunction that:
  - a. Enjoins the Defendant Commissioner from enforcing Tenn. Code Ann. § 55-4-210(d)(2); and
  - b. Enjoins the Defendant Commissioner from summarily revoking vanity plates on a pre-hearing basis under Tenn. Code Ann. § 55-5-117(a)(1) and Tenn. Code Ann. § 55-5-119(a).
4. That this Court issue a final judgment declaring that Tenn. Code Ann. § 55-4-210(d)(2) is facially unconstitutional and violates the First and Fourteenth Amendments.
5. That this Court award Ms. Gilliam damages in an amount of \$1.00 per day that she was unlawfully forbidden from displaying her constitutionally protected vanity plate.
6. That this Court grant the Plaintiff her reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988(b).
7. That this Court grant the Plaintiff all other relief to which she is entitled.

Respectfully submitted:

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