## SUMMARY OF THE CASE

Intervenor-Appellee, A New Star Limousine and Taxi Service, Inc., a taxicab company established by Luis Paucar, intervened in the instant matter in order to protect its ability to provide taxi service within the City of Minneapolis. The Appellant, a coalition of existing taxi license holders, seeks the repeal of the City of Minneapolis' pro-competitive legislative reforms and the revocation of 90 taxi licenses that have already been issued to Mr. Paucar and others. Incredibly, Appellant claims a so-called property right to a monopoly on taxi licenses that is in direct conflict with the rights of Mr. Paucar and others in their taxi licenses. If accepted, this theory would set a dangerous precedent. Regulations with an anti-competitive effect would become the most shielded from review and change. As the district court below held, though, there is absolutely no basis in the Constitution or in the case law for Appellant's claim. Counsel for Intervenor-Appellee asks the Court for 20 minutes of oral argument.

## CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1, Intervenor-Appellee, A New Star Limousine and Taxi Service, Inc., hereby certifies that it has no parent corporation and that no publicly held corporation owns ten percent or more of its stock.

## JURISDICTIONAL STATEMENT

Intervenor-Appellee adopts the jurisdictional statement set forth in Appellant's brief.

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## STATEMENT OF THE ISSUES

(1) Did the district court err in holding that the Coalition did not have a property right in the inflated value of their licenses in a secondary market?

*Jackson Sawmill Co, Inc., v. United States*, 580 F.2d 302 (8th Cir. 1978)

*Rogers Truck Line, Inc. v. U.S.*, 14 Cl.Ct. 108 (1987)

*Peanut Quota Holders Association, Inc. v. U.S.*, 421 F.3d 1323 (Fed. Cir. 2005)

(2) Did the district court err in holding that changing the standard for entry into the taxi market in Minneapolis did not violate the due process rights of the Coalition?

*Gomez v. Toledo*, 446 U.S. 635 (1980)

*Board of Regents v. Roth*, 408 U.S. 564 (1972)

*State of Minnesota v. Phillip Morris Co.*, 713 N.W.2d 350 (Minn. 2006)

(3) Did the district court err in holding that the Coalition, which is not a service company, did not have standing to challenge new taxi regulations that only apply to service companies?

*Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

## STATEMENT OF THE CASE

Recent reforms enacted by the City of Minneapolis ("the City") have allowed entrepreneurs, like Intervenor-Appellee A New Star Limousine and Taxi Service, Inc. ("A New Star Taxi"), to enter the City's formerly highly-restricted taxi market. The Appellant in this case, the Minneapolis Taxi Owners Coalition, Inc. ("the Coalition"), is made up of some of the current holders of taxi licenses and seeks, through the instant appeal, a return to the old, restrictive method of regulating entry to Minneapolis's taxi market. *See* Appellant's Brief and Addendum ("App. Brf.").[1]

In his Report and Recommendations, later adopted in full by the district court, the magistrate judge rightly concluded that the Coalition's members do not enjoy a "constitutionally protected freedom from competition" and cannot claim a so-called property right to exclude new entrants to the market who obtained their licenses pursuant to validly-enacted taxi reforms. A-76 through A-77. Accordingly, the Coalition's takings claim failed. Moreover, the district court correctly held that the Coalition's members neither have a constitutionally protected due process right beyond the use of their licenses nor do they have standing to litigate their exaction

[1] Because A New Star Taxi does not have any additional materials to add to the appendix already filed by the Coalition in this case, it will rely on and cite to the Appellant's Appendix with the same abbreviation: "A-" followed by the appropriate page number.

claim. A-77 through A-78. The Coalition's appeal seeks to overturn the district court's conclusions.[2]

## STATEMENT OF FACTS

The district court in this case set forth an accurate statement of the facts, based upon the assumed facts contained in the Complaint filed. A New Star Taxi urges this Court to adopt that objective summary rather than the misleading Statement contained in the Coalition's brief. The district court's statement of the facts is as follows:

> The Minneapolis Taxi Owners' Coalition ("the Coalition") is an organization of individuals who own taxicab vehicle licenses issued prior to October 1, 1995 by the City of Minneapolis ("the City"). (Compl. ¶ 3.) The City issued 273 licenses before October 1, 1995, all of which are transferable in that they can be bought and sold. (Compl. ¶¶ 8-9.) Since October 1, 1995, the City has issued 343 non-transferable licenses (Compl. Ex. C at 1.) The Coalition's members own about 75 transferable licenses. (Compl. ¶ 12.) In 2006, the City amended its taxicab ordinance to remove the cap on the number of taxi licenses issued. Minneapolis, Minn., Code of Ordinances, title 13, ch.

[2] The Coalition claims that it may have a valid equal protection claim in this case, but it has abandoned it on appeal. App. Brf. at 6 n.1. The Coalition did raise an equal protection claim below, and the district court rightly rejected it in its entirety. *See* A-78 through A-80.

341. sec. 300. The amendment provides that the City will issue 45 additional taxi licenses every year until 2011 when it will remove the cap altogether. *Id.* Until the City of Minneapolis ("the City") amended the ordinance, the transferable licenses had a market value ranging between $18,000 and $24,000. (Saleem Aff. ¶ 4, Strouts Aff. ¶ 5.) Now the transferable licenses are almost impossible to sell because entrants to the market can get licenses from the city for a relatively nominal fee. (Compl. ¶ 32.)

Prior to the ordinance amendment, the City held yearly "public convenience and necessity hearings" where the City Council would determine, based on a number of factors, whether it would issue new taxi licenses that year. (Compl. Ex. E, a copy of the pre-existing ordinance that includes the changes made to it in 2006.) The factors considered by the City Council at the public convenience and necessity hearings were:

a. the level and quality of service being provided by existing taxicab operators;

b. whether additional competition would improve the level of and the quality of service or the degree of innovation in delivery of services;

c. the impact upon safety of vehicular and pedestrian traffic;

d. the impact upon traffic congestion and pollution;

e. the available taxicab stand capacity;

f. the public demand and need for service;

g. the impact on existing operations; and

h. such other relevant factors as the city council may deem relevant.

(*See* Compl. Ex. E at repealed sec. 341.270(a).)

In addition to removing the cap on taxi licenses, the City made additional changes to the taxi ordinance. The new ordinance also requires that new service companies have a fleet size of at least 15 vehicles, ten percent of which must be wheelchair accessible and ten percent of which must be fuel efficient or run on alternative fuel. Minneapolis, Minn., Code of Ordinances, title 13, ch. 341, sec. 300(b). Service companies in existence on or before November 1, 2006 must also meet these standards by December 31, 2008. *Id.*

In Count One, Plaintiff alleges that the City deprived its members of their business licenses without due process of law and their "property interests" in their licenses were taken without just compensation. (Compl. ¶¶ 42-63.) In Count Two, Plaintiff alleges that the City deprived the Coalition's members of their property interest in the value of the licenses on the secondary market without just compensation

(Compl. ¶¶ 64-73.) In Count Three, Plaintiff alleges that the wheelchair accessibility requirements constitute an "unconstitutional exaction." (Compl. ¶¶ 74-86.) Count Four alleges that the City's decision to change the law resulted in a reduction in the value of the licenses to nothing on the secondary market, an outcome that constitutes a regulatory taking. (Compl. ¶¶ 87-96.) Count Five alleges that the Plaintiff's members were denied Equal Protection of the laws because the City amended the ordinance, in part, to better serve the Hispanic community. (Compl. ¶¶ 97-108.)

A-71 through A-73.

## SUMMARY OF THE ARGUMENT

The Coalition's argument, if accepted by this Court, would work a radical change in American law. Under its theory, any time the government sought to ease entry into a business or profession, it would face financial liability to those entities that once profited from the artificial barriers erected to that industry. As a result, the regulatory status quo would forever be maintained, no matter how onerous or irrational the scheme had become. It would simply be too expensive for governments to change their laws.

Fortunately for Minnesota taxpayers, consumers, and A New Star Taxi in this case, that is not the law in Minnesota or any other place in the country. The

Coalition has fully maintained its collection of taxicab licenses, and the holders of those licenses are completely free to compete and use their licenses as they see fit. No property interest has been taken from them nor has any constitutional right been violated. As held by the district court below, the Coalition's members do not enjoy a constitutionally protected freedom from competition and cannot claim a so-called property right to exclude new entrants to the market who obtained their licenses pursuant to validly-enacted taxi reforms. Accordingly, the Coalition's takings claim fails.

Moreover, because no legitimate property interest is at stake, the taxi reforms passed by the City do not violate any due process rights. The City simply adopted a new standard for entry into the taxi market and made such a determination after listening to all interested parties. As a part of that reform, the City also passed new standards requiring a certain percentage of service companies' vehicles to be handicapped-accessible and fuel-efficient. The Coalition raised a completely baseless "unconstitutional exaction" claim against these requirements. But, as the district court noted, the Coalition does not even have standing to raise the illegitimate claim because the new regulations do not directly affect the Coalition and its members.

The Coalition is not happy that their licenses are not as valuable as they once were on the secondary market that had developed when the City excluded new

entrants into the taxi business, but some drivers simply do not have a constitutional right to keep others out of the market so that they can maintain a certain level of long-term profits arising from an artificially restricted market. There is nothing in the Constitution that prevents a government like Minneapolis from relaxing regulatory barriers to entry into a profession. In contrast, overturning the new law and going back to the old regime would take away A New Star Taxi's constitutional right to a pursue a lawful occupation.

## ARGUMENT

Standard of Review

The district court granted a motion to dismiss for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). Thus, all of the claims raised by the Coalition in this appeal are reviewed de novo. *In re Canadian Import Antitrust Litig.*, 470 F.3d 785, 788 (8th Cir. 2006).

### I. THE COALITION HAS NO PROPERTY RIGHT IN THE INFLATED COST OF A TAXI LICENSE IN A SECONDARY MARKET SO IT CANNOT CLAIM ANY PROPERTY HAS BEEN TAKEN IN VIOLATION OF THE U.S. AND MINNESOTA CONSTITUTIONS.

The Coalition claims that the district court held it "did not have a property interest in the value of their taxicab licenses." App. Brf. at 19. That is not accurate. Rather, the district court correctly held that the "license holders do not have a property interest in the value of the taxicab vehicle license on the secondary market because the issuance of the license does not entitle them to that value, nor does it

provide for its legal protection." A-76. The district court further concluded that Coalition members "do not have a constitutionally protected freedom from competition." A-76 through A-77.

The Coalition asks this Court to create a new right under the Constitution: a right to sell licenses at an inflated price due to former restrictions that once made it very difficult for new entrants to obtain a license. This Court should reject this dangerous, baseless invitation. In order for the Coalition to have any chance of success on either its takings or due process claims, it must first establish that the government has "taken" a legitimate property right or interest. As set forth below, the Coalition has failed this threshold test.

### A. Just As The United States Was Able To Reform The Interstate Trucking Industry Without Taking Supposed Property From Existing License Holders, So Too Can Minneapolis Reform Its Taxi Licensing System.

Through its reform legislation, the City has not prohibited anyone from using, selling or transferring a pre-1995 taxi licensee. Minneapolis, Minn. Code of Ordinances, title 13, ch. 341, Art. III, IV, VI (2007), http://www.municode.com/resources/gateway.asp?pid=11490. As the district court held, all the City has done is change its regulatory system and recognize the ability of new drivers and companies to come into the marketplace. A-76. The City has done nothing to interfere with the Coalition's members' ability to operate their taxis

or to lease or transfer their licenses to others. They remain free to carry on their business exactly as before the reform legislation was passed.

Despite this uncontested fact, the Coalition spends page after page in its appellate brief seeking to establish that taxi licenses are property interests and the City, through its new legislation, has somehow taken this interest. *See* App. Brf. at 19-24. What the Coalition really claims is not that the City has taken a property interest in taxi licenses (it has not), but that it has a property right to the formerly inflated value of its taxi licenses, where the inflated price came from preventing others from going into business. By permitting new entrants into the market, that inflated price has now been substantially reduced in value on the secondary market.[3] Therefore, according to the Coalition, its "property" has been taken in violation of the U.S. and Minnesota Constitutions.

As the district court and every other court that faced similar challenges has held, the Coalition simply has no property right at all in the resale value of its licenses as inflated by previous restrictive regulations on entry into the marketplace. The Coalition's challenge here is almost identical to the challenge made in *Rogers*

[3] Even though the license holders that make up the Coalition maintain full ownership of their licenses and are able to use them just like before the passage of the new legislation, they make the hyperbolic claim that the value of the licenses on the secondary market has now been reduced to zero. *See* App. Brf. at 27. Regardless of whether the value has only decreased or has been reduced to zero, the Coalition, as set forth below, simply has no property right in the value of a license on a secondary market.

*Truck Line, Inc. v. U.S.*, 14 Cl. Ct. 108 (1987). *Rogers Truck Line, id*. at 109-10, involved a constitutional challenge to the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, which relaxed regulatory barriers to entry into the interstate trucking market. Just as the City of Minneapolis replaced the Taxi Code's public convenience and necessity standard with a fit, willing and able standard, Congress repealed the prior public convenience and necessity standard and authorized the issuance of "common carrier authorities"—the interstate trucking equivalent of taxi vehicle licenses—based on a fit, willing and able standard. *Rogers Truck Line*, 14 Cl. Ct. at 111 n.4. The Motor Carrier Act thereby rendered the interstate trucking market more open and competitive. *Id*. at 111.

Much like the Coalition in this case, Rogers Truck Line then brought a lawsuit to challenge such regulatory reform, seeking compensatory and other relief, claiming a protected property interest in the secondary market value of its common carrier authorities. Like the Coalition's members here, Rogers alleged that the Motor Carrier Act's reform of the interstate trucking business reduced the value of common carrier authorities to "zero," causing it to lose the entire $975,000 appraised value of two common carrier authorities that were acquired for a total cost of $375,810. *Rogers Truck Line*, 14 Cl. Ct. at 109.

The Court nevertheless entered judgment in favor of the United States. In reaching this decision, the Court held in relevant part:

> The Supreme Court has recognized for quite some time that regulation of property can be so burdensome as to constitute a taking. However, this case does not present such a situation. *In fact, it really presents the opposite situation, i.e., a relaxation of regulation* . . . . Plaintiffs have made no claim that they cannot continue to truck under their existing common carrier authorities. These authorities were never taken by the government . . . It may be that subsequent to passage of the Act there are more carriers competing with plaintiff. However, *plaintiff does not have a constitutionally-protected freedom from competition*.

*Id.* at 112, 115 (citations omitted) (emphasis added). The district court below agreed and held that participation in a regulatory program does not create a constitutionally-protected property interest in the program's collateral benefits.

Just as the Motor Carrier Act did not deprive Rogers' trucking business of its ability to operate in the market, taxi reform did nothing to deprive any holder of a taxi license to use the license, to lease a taxi vehicle in Minneapolis, or to transfer or renew a taxi license. (Compl., Ex. D and E, § 341.300, .310, *inter alia*; A-50 through A-52 and A-55 through A-58.) The Coalition's members have retained all legal rights incident to their taxi vehicle licenses. Moreover, as discussed in *Rogers Truck Line,* regulating entry into a market by means of the public convenience and necessity standard does not grant existing businesses an exclusive legal right to serve a particular market, nor is the standard somehow constitutionally-protected from legislative amendment or repeal. *Rogers Truck Line*, 14 Cl. Ct. at 109-15. Consequently, none of the Coalition's members ever had a "constitutionally-protected freedom from competition" in the Minneapolis taxi market. *Id.* at 115.

For these reasons, taxi reform did not deprive any of the Coalition's members of any cognizable property interest. *Id*. Nor did the Coalition's members suffer a regulatory taking because laws that relax regulations, like taxi reform and the Motor Carrier Act, are the "opposite" of property regulations. *Id*. at 112.

The Coalition's only responses to the *Rogers Truck Line* decision is to claim that it set the "bar far too high" and that it "should be viewed with some suspicion due to the fact that the attorney for the plaintiffs in that case withdrew and no response was filed to the United States' motion for summary judgment." App. Brf. at 26. It is not surprising that the Coalition desperately seeks to undercut *Rogers Truck Line*, as it is completely analogous to the situation here and demolishes its claim for a taking of their so-called right to an inflated price for their licenses. *Rogers Truck Line* is of course not binding on this Court, but its reasoning is sound and persuasive.

**B. The Coalition Has No Case Support Whatsoever For Its Takings Claim.**

As the district court noted, other important cases from both the U.S. Supreme Court and this Court foreclose the Coalition's challenge. A-74 through A-76. For instance, in *Jackson Sawmill Co, Inc., v. United States*, 580 F.2d 302 (8th Cir. 1978), this Court rejected the notion that investment-backed reliance upon *de facto* monopoly status creates a constitutionally-protected freedom from competition, much less a property right to perpetual monopoly profits. The district court was

right to follow controlling and persuasive precedents concerning the Coalition's unfounded takings claim. Indeed, no precedent whatsoever supports its theory.[4]

Given the direct applicability of *Rogers Truck Line, Jackson Sawmill,* and other precedents, the Coalition seeks to latch on to some language in *Peanut Quota Holders Association, Inc. v. U.S.*, 421 F.3d 1323 (Fed. Cir. 2005), to support its claim. *See* App. Brf. at 24-25. But that case also contradicts its takings argument and actually supports A New Star Taxi's position. There is a fundamental difference between the claimed property right in the inflated value of a taxi license at issue here and the peanut quota statute, where the government "award[ed] a quota holder *a set price on a fixed quantity of peanuts*." *Peanut Quota Holders*, 421 F.3d at 1334 (emphasis added). The key to the court recognizing a property interest in the *Peanut Quota Holders* case was that the government directly guaranteed the peanut quotas' value and promised to pay the peanut growers that value. In other words, the peanut growers were getting direct "monetary subsid[ies]" from the government, in which the appellate court recognized some property interest. *Id*. at 1334.

[4] The other cases cited by the Coalition are totally inapposite. *State v. Saugen*, 169 N.W.2d 37 (Minn. 1969), and *Thacker v. FCC (In re MagnaCom Wireless, LLC)*, 503 F.3d 984 (9th Cir. 2007), concerned whether parties had a property interest in their government-issued licenses. The regulations at issue took away the actual license—the ability to engage in the relevant activity. Likewise, the court in *Boonstra v. City of Chicago*, 574 N.E.2d 689, 692 (Ill. App. Ct. 1991), also cited by the Coalition, held that a taxi license bequeathed to a widow could not be seized and rendered non-assignable by the City without notice and a hearing as well as just compensation. Unlike in these cases, Minneapolis' taxi reforms did not take away or alter the transferability of any taxi license enjoyed by the Coalition's members.

Here, the City never fixed prices or gave monetary subsidies to license holders. It never guaranteed inflated profits for taxi licenses on a secondary market. Rather, the value of the license was simply the by-product of the City's formerly restricted market. Unlike the direct monetary subsidies and guarantees of peanut quotas in which the Federal Circuit recognized some property interest, the Coalition's members have no property interest whatsoever in the incidental profits arising from the transfer of a taxi license. The Minneapolis taxi licenses are analogous to the fishing and gun licenses discussed in *Peanut Quota Holders. Id*. at 1331. Contrary to the Coalition's claim that the City was somehow forever locked into using the public convenience and necessity standard, the City was free to change its system of regulating entry into the taxi market and it never guaranteed the value of existing licenses. *Peanut Quota Holders*, 421 F.3d at 1334. ("So long as the government retains the discretion to determine the total number of licenses issued, the number of market entrants is indeterminate.") Just like the fisherman and firearms dealers discussed in *Peanut Quota Holders*, the Coalition here cannot "exclude later licensees from entering the market, increasing competition, and thereby diminishing the value of [its] license." *Id*. The peanut growers' property interest in direct monetary subsidies from the government is entirely distinguishable

from the profits the Coalition once derived from an artificially-restricted market for taxi licenses.[5]

As demonstrated, the Coalition simply has no property interest in the inflated price of its license in a secondary market. Accordingly, even taking the Coalition's facts in the Complaint as true, there could not have been a taking of its property in violation of the U.S. and Minnesota Constitutions.[6]

## II. BECAUSE THE COALITION DOES NOT HAVE A LEGITIMATE PROPERTY INTEREST AT STAKE IN THIS CASE, THERE IS NO DUE PROCESS RIGHT AT ISSUE.

The Coalition's due process claim is a rambling hodgepodge of various arguments, at times raising supposed due process issues while at other points lapsing back more into a takings-like analysis. The brief also has a long, irrelevant digression on whether the City, when it changed its standard for issuing taxi

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[5] It is important to note that the Federal Circuit in *Peanut Quota Holders*, while recognizing some property interest in the quotas, went on to conclude that the revocation of the peanut quotas were not compensable, because "unless the statute itself or surrounding circumstances indicate that such conveyances are intended to be irrevocable, the government does not forfeit its right to withdraw those benefits or qualify them as it chooses." *Peanut Quota Holders*, 421 F.3d at 1335; *see also id*. (citing *Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment*, 477 U.S. 41, 52 (1986) ("since Congress at all times retains the ability to amend statutes, a power which inheres in its authority to legislate, Congress at all times retains the right to revoke legislatively created entitlements.") Of course, there is nothing in the taxi legislation either that claims that the public convenience and necessity standard was intended to be irrevocable.

[6] Because no property right exists in the inflated profits from a secondary market in license transfers, this Court need not address the issue raised by the Coalition of how to compensate its members for the loss of value for their non-existent property interests. *See* App. Brf. at 28-34.

licenses, acted in a legislative or quasi-judicial function. *See* App. Brf. at 27-32. The Coalition's due process claim fails, however, because, like its takings claim, it is based on a false premise: that the City revoked or, at the very least, substantially reduced a legally protected property right.

As explained above, the Coalition has no property interest in the price its members once paid for their taxi licenses in a secondary market. The Coalition cannot claim that the City violated its due process rights in taking away something to which it was not entitled in the first place.

The Fourteenth Amendment states that no person shall be deprived of life, liberty or property without due process of law. A foundational requirement for raising a due process claim is that the government must deprive an individual of a legally protected interest in property. *See*, *e.g.*, *Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (a plaintiff under Section 1983 "must show that a government entity deprived her of a right secured by law"); *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (individual must have "legitimate claim of entitlement" to property interest to state a claim under Section 1983). As the district court succinctly held:

> In Count One, Plaintiff alleges that the license holders were deprived of their licenses without due process of law, in violation of the Fourteenth Amendment. . . . This claim must be dismissed because the City's amended ordinance did not deprive Plaintiffs of their licenses. Under the amended ordinance, the City increased the number of licenses available but did not revoke any licenses that were already issued.

A-77.[7] Because there is no legally recognized property right or interest at stake here, this Court does not need to go any further in its due process analysis. It is perhaps important, however, to provide some explanation of the process the City undertook in changing its taxi regulations in order to rebut the Coalition's absurd claim that it was somehow deprived of due process.[8]

When the City changed its standard for issuing new taxi licenses, it heard from several parties and individuals. The City's Public Safety and Regulatory Services Committee conducted hearings on May 17, June 7, and September 27, 2006. (Compl., ¶¶ 23 and 37; A-13 and A-18.) The Coalition's members actively participated in these meetings, challenged findings that there was unmet public demand for taxis, and made plain to City Council members that they had purchased transferable licenses in a secondary market. (Compl., Ex. A ¶ 6; Compl., Ex. J ¶¶ 4-7; A-31 and A-66 through A-68.) In fact, the Public Safety and Regulatory Services

[7] The handful of cases cited by the Coalition are completely inapposite. For example, both *CUP Foods v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn.App. 2001) and *Bird v. Department of Public Safety*, 375 N.W.2d 36, 42 (Minn. Ct. App. 1985), dealt with the actual revocation of licenses. Of course, the Coalition's members have not had their licenses revoked or even restricted in any way.

[8] The Coalition argues that it is somehow significant for due process purposes that the City "approv[ed]" the transfers of the licenses that arose on the secondary market. App. Brf. at 35-36. But the City's "approval" was simply ministerial. If a license was transferred from one owner to another, the City obviously would need to know the name of the new license holder and whether that person met the qualifications for driving a taxi. It is similar to the government recording transfers of title between property owners. It has nothing to do with whether the government violated due process by changing the rules of entry into the taxi market.

Committee heard testimony, at its initial two meetings, from 27 opponents to opening the market to new entrants (Compl., Ex. A; A-33 through A-34). It cannot be disputed that the City considered the Coalition's views because not only were its members given great opportunity to be heard during the three public hearings, the Coalition and others succeeded in influencing a minority of City Council members to oppose the reforms to the taxi ordinance. (Compl., Ex. D, vote recorded on p. 10; A-53.)

The Coalition received notice and an opportunity to be heard on the changes to the licensing system. As noted, the City Council listened to individuals and companies that defended the old public convenience and necessity standard and others who wanted a different standard. The Council weighed these matters and then made a quintessential legislative determination—it decided to modify the law by passing new legislation that replaced one system with another. What the Coalition wants is a judicial order to reinstate the old system of determining whether to grant new taxi licenses, claiming that forcing it to live under a validly enacted new system of taxi licensing violates its due process rights.

The Coalition's due process argument merely boils down to the fact that it does not like the new system adopted by the legislature. It stresses that the legislature should have chosen to keep the old system based upon the evidence it and

others presented. But simply disagreeing strongly with a legislative outcome is not enough to have that system overturned by a court.[9]

There are just no grounds for concluding that the Coalition's members were not accorded due process by the City's legislative process. Indeed, there is no basis at all to apply a due process analysis of any kind because no cognizable property interest has been taken from the Coalition. Accordingly, the due process claim must fail.

## III. THE COALITION'S MEMBERS DO NOT HAVE STANDING TO MAKE AN UNFOUNDED EXACTION CLAIM.

In the district court, the Coalition raised a vague, unfounded "unconstitutional exaction" claim against a new city requirement that a certain percentage of vehicles

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[9] At the end of its due process argument, the Coalition cryptically suggests that changing the standard for entry into the taxi market in Minneapolis violates settlement agreements reached some 20 years ago between some owners of cab companies and the City. *See* App. Brf. at 48-50. The Coalition, however, does not even allege in its Complaint that its members were parties to those settlements. More importantly, the public record concerning the settlements reveals they only require that the City hold hearings before granting more than 25 new taxi licenses, which the City unquestionably did in the three hearings in 2006 in this case. *See* Pg. 2 of Minutes of Standing Committee on Licenses & Consumer Services of March 23, 1988 in Affidavit of Jay Olson filed with Plaintiff's Memorandum of Law in Opposition to Intervenor's Motion to Dismiss in the Clerk of the Court file. Finally, to the extent that these mysterious settlements really do preclude the City from changing the standard for entry into the Minneapolis taxi market, they are unenforceable because they would impair the sovereign powers of government. *See State of Minnesota v. Phillip Morris Co*., 713 N.W.2d 350 (Minn. 2006) (holding that subsequent legislation did not violate tobacco settlement because agreement did not unmistakably relinquish government's sovereign power to impose new requirements on tobacco companies).

must be fuel-efficient and handicapped-accessible. As set forth below, the Coalition does not even have standing to raise these claims because none of its members are in fact service companies, which are the only entities to which the new standards apply. At best, all the Coalition's members can do is speculate that perhaps some of them, some day, may be required to re-equip their cabs so that their service companies can meet the new 10% requirement for accessibility and fuel efficiency. Such speculative, non-particularized injury cannot serve as a basis for standing to challenge the new regulations.

Along with relaxing barriers to entering the Minneapolis taxi market and adopting a "fit, willing and able" standard for new taxi licensure, the City enacted new fleet composition regulations for all service company licensees. These new regulations require service companies to dedicate five percent of their fleets to wheelchair-accessible vehicles and another five percent of their fleets to fuel-efficient cars by December 31, 2007. A-55. Each of these percentages increases to ten percent by December 31, 2008. A-55. The same vehicle can count towards each fleet composition requirement, such that a fuel-efficient, wheelchair-accessible vehicle can be counted toward both the fuel efficiency fleet percentage and the wheelchair accessibility fleet percentage. (Compl., Ex. D, sec. 341.300 (b) through (e); A-50.) Consequently, as little as 10% of a given service company's taxi fleet is affected by these new regulations and no more than 20%. Put another way, the

City's new fleet composition regulations have no impact on 80% to 90% of any given service company's taxi fleet.

As the district court held, these fleet composition requirements do not directly regulate any taxi license holder and they are unlikely to have any effect on any particular taxi license holder. For this reason, the district court correctly noted that any injury to the Coalition from the foregoing fleet composition regulations is attenuated and speculative. Consequently, the Coalition lacks standing to challenge them.

Even the Coalition admits that "the amended ordinance does not address the license holders directly." App. Brf. at 50. Nevertheless, it objects to the ruling below by attempting to breathe life into its standing claim by arguing that its members "still bear the brunt of its regulation" and also that the adverse impact of the fleet composition regulations equally injure taxi licensees and service company licensees. *Id*. These arguments are unpersuasive.

The Coalition's claim to standing to raise its exaction claim is conjectural and hypothetical. The Coalition has not alleged and still cannot identify if, how, which, and when its members will be injured as a result of their status as taxi vehicle licensees. In fact, the City's issuance of new taxi licenses under taxi reform gives service company licensees the option of meeting new fleet requirements with new licensees, rather than through compelling any existing taxi licensee to upgrade their

vehicles. A-51. Service companies may attract into their fleets some of the recipients of the 90 recently issued taxi licenses and from upcoming rounds of licenses to be issued. A-52. As a result, the Coalition has not alleged and cannot say with any certainty that its members will be involuntarily forced to upgrade their current vehicles to a wheelchair-accessible or a fuel-efficient car.

Equally important is the fact that one may assume a 20% annual turnover of the vehicles in service with any given service company's fleet because the City's ordinance has long required that no vehicle shall be operated unless the vehicle has a model year of five (5) years or less. (Compl., Ex. D, sec. 341.595; A-53.) In one year alone, there is sufficient mandatory fleet turnover to meet the permanent quota for wheelchair-accessible and fuel-efficient cars without requiring any taxicab licensee to prematurely sell her existing car.

For those vehicles that are wheelchair-accessible or fuel-efficient, the City's new ordinance extends the useable life of such cars by 60%, from five to eight years. (Compl., Ex. D, sec. 341.595; A-53) This incentive may actually encourage licensees to acquire wheelchair-accessible or fuel-efficient vehicles because the extended life may more than offset their incremental purchase price.

For these reasons, it is too speculative to say whether, how or whom the City's new fleet requirements will *indirectly* affect, if at all. Such speculation cannot serve as a basis for standing to challenge the new fleet regulations. In that regard, the

Coalition has not met its burden of showing standing by establishing that its members have suffered an injury that is in fact, i.e., a concrete and particularized, actual or imminent invasion, and not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

In the face of this total uncertainty, the Coalition grasps primarily at *Truax v. Raich*, 239 U.S. 33 (1915), for the proposition that an employee has standing to challenge a law directed toward his or her employer. App. Brf. at 52-53. But this case can be distinguished because, as the Court notes, the Arizona act at issue in *Truax* prohibiting an employer from filling more than 20% of her workforce with non-native-born citizens "undertakes to operate *directly* upon the employment of aliens, and if forced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limits." 239 U.S. at 38, 39 (emphasis added). Here, by contrast, the City's concurrent issuance of new taxi licenses gives service companies the option of associating with new taxi licensees to meet the City's fleet composition requirements. For this reason, unlike in *Truax*, the new fleet composition requirements have no direct impact on the Coalition's members by virtue of their status as existing taxi licensees. And the possibility of any indirect adverse impact on its members is rendered even more remote and speculative given the highly-fluid environment of required fleet turnover, an ever-increasing number of cab and service company licensees, and potentially net-

beneficial incentives for purchasing wheelchair-accessible and fuel-efficient vehicles.

As with its other claims, there is simply no basis in law for the Coalition's argument that it has standing to raise an "unconstitutional exaction" claim against the City's requirement on service company licensees that they dedicate 10 to 20 percent of their fleets to wheel-chair accessible vehicles and fuel-efficient cars. No case cited by the Coalition suggests that adequate allegations of standing exist in the Coalition's Complaint. Consequently, the district court held correctly that the Coalition has no standing to challenge the fleet wheelchair accessibility and fuel efficiency regulations, which are imposed on licensed service companies and not taxi license holders.

## CONCLUSION

No court has ever held that there is a constitutionally-protected property right to the spoils of regulatory barriers to entry into a lawful occupation. This Court should reject the Coalition's invitation to create new and dangerous precedent that would ensure that members of a cartel are protected from regulatory reform aimed at creating new entrepreneurial options for individuals like Luis Paucar.

For the foregoing reasons, A New Star Taxi respectfully asks this Court to affirm the decision below.

Respectfully submitted,

INSTITUTE FOR JUSTICE

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**CERTIFICATE OF COMPLIANCE WITH L.R. 28A(d) AND F.R.A.P. 32(a)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,461 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2003 in 14-point Times New Roman.

3. The digital version of Appellee's Brief submitted to the Court pursuant to Eighth Circuit Local Rule 28A(d) was scanned for viruses as it was being copied to a diskette and that the result of such virus scanning showed that the file was free from viruses.

Dated: April 18, 2008

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A NEW STAR LIMOUSINE AND
TAXI SERVICE, INC.

## CERTIFICATE OF FILING AND PROOF OF SERVICE

*Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis and A New Star Limousine and Taxi Service, Inc.*
No. 08-1239

Lee U. McGrath certifies that on April 18, 2008 he filed the original and nine copies of the foregoing Intervenor-Appellee's Brief on behalf of A New Star Limousine and Taxi Service, Inc. and a 3.5" diskette containing the text of Intervenor-Appellee's Brief in PDF format with the following:

Clerk of the Court
U.S. Court of Appeals for the Eighth Circuit
U.S. Courthouse, Room 24.329
111 South Tenth Street
St. Louis, Missouri 63102-1125

by mailing same via first class U.S. mail, with proper postage prepaid, from 527 Marquette Avenue, Minneapolis, Minnesota, in a properly sealed envelope addressed to the foregoing party at or prior to 5:00 p.m. on April 18, 2008.

_____
Lee U. McGrath

Lee U. McGrath further certifies that on April 18, 2008 he served two copies of the foregoing Intervenor-Appellee's Brief and one 3.5" diskette containing the text of Intervenor-Appellee's Brief in PDF format on each of the following parties:

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by depositing true and correct copies thereof in envelopes addressed to the foregoing parties, with first class postage prepaid and delivered by U.S. Mail.

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