IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOE SANFELIPPO CABS, INC., G.C.C., INC., ROY WMS, INC., FRENCHY'S CAB COMPANY, INC., 2 SWEETS, LLC.,	)	
Plaintiffs,	)	
v.	)	No. 14-CV-1036
CITY OF MILWAUKEE,	)	
Defendant,	)	

PROSPECTIVE INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR PARTIAL MOTION TO DISMISS

INTRODUCTION

For decades, Milwaukee's taxi regulations implemented a hard cap on the number of taxis that could operate in the city. Those regulations were declared unconstitutional in 2013 by a Wisconsin state court because they created a *de facto* cartel, which served only to shield incumbent taxi permit holders from competition and to deprive independent taxi drivers of their right to earn a living under the Wisconsin Constitution. Intervenor-Defendants Jatinder Cheema and Saad Malik are independent Milwaukee taxi drivers. Cheema was a prevailing party against the City of Milwaukee in that prior state court action. In July of this year, the City complied with the state court's order by enacting a new ordinance which entirely eliminated the cap on taxi permits and permitted other car services to also compete with taxis throughout the city. Both Cheema and Malik now look forward to being able to own their own cabs because of the state court order and subsequent ordinance.

The instant action is brought by Joe Sanfelippo Cabs, Inc., et al., a group of incumbent taxi permit holders that have benefitted from the old regulations. Their suit is an attempt to restore their privileged position and resurrect the unconstitutional status quo. If they succeed, independent cab drivers like Cheema and Malik will see their past victory eclipsed and their chance at their piece of the American Dream denied.

Plaintiffs allege that the City's removal of the cap on taxicab permits constitutes an unconstitutional deprivation of property under the Fourteenth Amendment's Due Process Clause, Compl. ¶ 3. Part I of this brief demonstrates that this claim has been rejected by every court that has considered it in the past, and should therefore be dismissed. Plaintiffs also challenge the City's new ordinance on the grounds that it violates the Fourteenth Amendment's Equal Protection Clause, *id.* ¶ 1, and that it is unconstitutionally vague, *id.* ¶ 2. As explained by Intervenor-Defendants' Motion to Intervene, their primary interest in this case is ensuring that the provisions of the ordinance that eliminate the cap on taxicab permits—that is, the part of the new ordinance that is mandated by the terms of the 2013 state-court order—are preserved. However, Intervenor-Defendants note in Part II of this brief that Plaintiffs' equal protection claim and their vagueness challenge can be easily resolved without significant additional litigation.

Intervenor-Defendants respectfully request this court to dismiss Plaintiff's due process claim for compensation pursuant to Federal Rule of Civil Procedure 12(b)(6) because it fails to state a claim on which relief can be granted.

FACTS

The City of Milwaukee has made two significant changes to its taxi regulations during the past year. In November 2013, the City increased the number of taxis permitted to operate in

Milwaukee by 100, to a total of 420 cabs. Milwaukee Common Council ("MCC") File No. 130903 (adopted Nov. 26, 2013).[1] In July 2014, in order to fully comply with a Wisconsin state court order[2] declaring prior Milwaukee taxi regulations unconstitutional, the City repealed and replaced its former taxi regulations with a new ordinance that lifted the cap on the number of cabs that could operate in the city entirely, and set out new regulations for other car services, such as Uber and Lyft, that may compete with taxi cabs. MCC File No. 131800 (adopted July 22, 2014) (attached as Ex. 6).

This action is brought by taxi permit holders who acquired taxi permits prior to November 2013, under the City of Milwaukee's now-repealed taxi regulation regime. Compl. ¶ 20. They are challenging the July 2014 ordinance that has allowed increased competition in the city. *Id.* ¶ 1-4.

A. Brief History of Milwaukee's Taxi Regulations

Prior to November 2013, the City limited the number of taxi permits that could be issued. *Id.* ¶ 13-15. Permits could be transferred or sold, and those not renewed were cancelled entirely under the ordinance—meaning that the number of permits could go down from the number in existence in 1992 but not go up. *Id.* ¶ 15. As of November 2013, there were 320 taxi permits in existence in the city. *Id.* ¶ 21 (quotation from letter to City of Milwaukee Common Council dated July 17, 2013).

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[1] *Available at* https://milwaukee.legistar.com/Legislation.aspx (search 130903 in 2013).

[2] The state court's final order and rulings are attached as Exhibits 3, 4, and 5. (For the purposes of this Memorandum as a proposed memorandum attached to the Memorandum in Support of the Motion to Intervene, the exhibits referred to herein are the same as the exhibits for the Memorandum in Support of the Motion to Intervene.) The Court may take judicial notice of the Wisconsin state court order and other public documents on a 12(b)(6) motion to dismiss without converting the motion to dismiss into a motion for summary judgment. *See Palay v. United States*, 349 F.3d 418, 425 n.5 (7th Cir. 2003). Further, the Court may also consider documents referenced in the complaint, including the order and the transcripts of Common Council proceedings from 1991. *Hecker v. Deere & Co.*, 556 F.3d 575, 582 (7th Cir. 2009).

When the Common Council adopted this ordinance in 1991, the ordinance's chief sponsor cautioned that the Council could always change the number of permits. Alderman Nardelli, Chairman of the Utilities and Licensing Committee, was asked by a member of the public "Will there at any given time in the future be any new permits issued?" In response, Alderman Nardelli said:

> **The passage of this substitute ordinance would not preclude that from happening. Anything can happen with regard to legislation.** Some member of this council could say: I think that the bottom has dropped out and I would like to see two or three or five or ten or 20 more vehicles put out, you know, authorized. So change – change the current level to a different level. That could happen.

Ex. 12 at 14 (emphasis added). Further, an opponent of the ordinance, Alderman Kalwitz, also warned taxi owners that their permits might very well rise in value but then plummet again one day, stating:

> I suggest that those that might want to make money if, in fact, this is approved, I would sell those permits in the next year or two, because after that the . . . and it's not going to be worth anything. **Some people are going to be left holding the bag.** Those are the – that's what happens.

Id. at 35 (emphasis added).

Alderman Kalwitz may have been off by 20 years on the timing, but he was exactly right—and outspoken—on the risk people took in purchasing taxi permits. He and Alderman Nardelli are the very same aldermen, at the very same hearings, that Plaintiffs selectively quote from in their Complaint in an effort to construct a property right out of what really was an unconstitutional and transient monopoly privilege. Compl. ¶¶ 16, 19.

For the next 22 years the incumbent taxi owners profited from the City's longstanding but unconstitutional policy of keeping a cap on the number of taxicabs. Because taxis were artificially scarce, permits under the old regime cost an astonishing amount of money to begin

what is otherwise an entry-level occupation: driving people from A to B. Compl. ¶ 20. The cost of acquiring a permit in recent years was established by the state court to be approximately $150,000 for each permit. Ex. 3 at 50. In other words, it cost less to buy an average priced home in the city of Milwaukee than it cost for a permit granting the right to lawfully own a cab. The purchase money paid by new entrants into the business for permits directly enriched the incumbent permit holders.

In 2011, independent cab drivers who were shut out of the market challenged the City's ordinance, and in 2013 they won. A Milwaukee County court struck down the cap as unconstitutionally shielding incumbent taxi owners from competition and depriving would-be transportation entrepreneurs of their right to earn a living, as protected by the Wisconsin Constitution, with rulings in April and May 2013 and a final judgment on June 18, 2013. Exs. 3, 4, and 5. The City at first appealed the ruling but later dismissed the appeal. *Ibrahim v. City of Milwaukee*, App. No. 2013AP001710 (Wis. Ct. App. Dist. 1).[3]

In response to the state court ruling, in November, 2013 the City first decided to allow increased competition among taxis by issuing 100 additional taxi licenses by lottery. Compl. ¶ 26. The City was overwhelmed with the number of entrants to the lottery—there were more than 1,700 applications for the lottery of 100 permits and many applicants, including Intervenor-Defendants, did not receive permission to enter the market.[4] The City determined to study the

[3] The docket for the appeal can be found at http://wscca.wicourts.gov/caseDetails.do?caseNo=2013AP001710&cacheId=58561F8FA5C973EED19FAACCA1E47B00&recordCount=1&offset=0. It is worth noting that Plaintiffs belong to a trade association (the Wisconsin Association of Taxi Owners) that filed an amicus brief opposing the independent cab drivers in that case, pressing many of the same arguments that they are pursuing in the present case. *Id.* Joe Sanfelippo Cabs, Inc., also filed an amicus brief in the Wisconsin Circuit Court during the briefing for summary judgment.

[4] The lottery results are available at http://city.milwaukee.gov/taxilotteryresults3#.U_xrl2NMXSg. Intervenor-Defendant Cheema's losing lottery result is identified on the results table as Lottery

issue further after issuing those permits and consider what was required to fully comply with the state court's April 2013 order and best service Milwaukee's consumers and would-be transportation entrepreneurs. Compl. ¶¶ 31-43. In July 2014, the City passed a new ordinance replacing its previous taxi regulations and bringing its regulations into full compliance with the state-court order. The new ordinance allows all incumbent holders of taxi permits to continue doing business, but now sets no limit on the number of cabs that may operate in the city. Compl. ¶ 42. The new ordinance also permits and regulates other car services, such as Uber and Lyft—which the ordinance calls "Network Vehicles"—that may compete with taxis. Ex. 6. Further, the new ordinance continues to allow permit holders, including Plaintiffs, to transfer permits to others. *Id.* at § 100-50-3(f) ("[A] new public passenger vehicle permit may be issued upon surrender of an existing permit to the city clerk and either an application by the permittee to change his or her legal form of business or upon application of a permitttee to transfer the permit to another person."). In alleging that the ordinance does not allow for transfers, Plaintiffs are legally incorrect. *See* Compl. ¶¶ 52-53 (quoting statements made at hearings but not actually quoting the ordinance as enacted).[5]

B. Plaintiffs' Lawsuit

Plaintiffs are a group of taxi permit holders who acquired permits prior to November 2013, under the City of Milwaukee's now-replaced taxi regulation regime. They allege that the introduction of new competition into the city's transportation market will cause the value of their taxi permits to fall in value on the secondary market from their prior high price to nearly zero.

Position 320; Malik's losing result is identified as Lottery Position 784. As explained in the Memorandum in Support of the Motion to Intervene, Malik's mother was one of the first 100 drawn in the lottery.

[5] This Court is not required "to accept assertions of law or unwarranted factual inferences" in a complaint as true in deciding a motion to dismiss. *Stachowski v. Town of Cicero*, 425 F.3d 1075, 1078 (7th Cir. 2005).

Compl. ¶ 53. The constitutional rights Plaintiffs allege the City has violated are their rights guaranteed by the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The remedies Plaintiffs ask for are (1) a declaration that the Milwaukee City Ordinance Chapter 100, as enacted on July 22, 2014, is unconstitutional and null and void; (2) an injunction prohibiting enforcement of Milwaukee City Ordinance Chapter 100, insofar as it permits the City to issue new taxi permits and allows alternative "Network Vehicles" to compete with taxis; and (3) money damages for the diminution in the value of their permits on the secondary market and perhaps for other losses resulting from the City's actions. Compl. ¶¶ 56-65.

ARGUMENT

STANDARD OF REVIEW

To avoid dismissal, Plaintiffs' Complaint must contain allegations that "state a claim to relief that is plausible on its face." *McCauley v. City of Chicago*, 671 F.3d 611, 615 (7th Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Plaintiffs must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *McCauley*, 671 F.3d at 615. Plaintiffs' Due Process claim for compensation makes no such showing.

I. PLAINTIFFS' DUE PROCESS CLAIM FOR COMPENSATION IS AN ATTEMPT TO THWART THE CITY'S COMPLIANCE WITH THE 2013 STATE COURT JUDGMENT AND HAS NO BASIS IN LAW.

The ordinance attacked by Plaintiffs was enacted to bring the City into full compliance with the 2013 court order holding the former taxicab permit cap unconstitutional. Plaintiffs allege that by "eliminating entirely any cap on the number of taxicab permits" the City caused them economic harm requiring compensation, because it reduced the value of their permits in the "secondary market." Compl. ¶¶ 3, 64-65. Plaintiffs seek through this action to have that very

cap restored, or be compensated for its elimination. Plaintiffs' due process claim seeking compensation is merely an attempt to thwart the city's compliance with the 2013 state-court order by imposing massive costs on the city for doing so.

Plaintiffs' claim should be dismissed because they fail to allege the most essential element of a property-based constitutional claim: a legally cognizable property interest that has been taken. *See, e.g.*, *Pro-Eco, Inc. v. Bd. of Comm'rs*, 57 F.3d 505, 510 (7th Cir. 1995). The artificially high value of taxi permits derived from an unconstitutionally protectionist permitting scheme is not a property right protected by the Fourteenth Amendment.

To be sure, Plaintiffs have a property interest in their permits themselves, but the Complaint does not allege that the City has taken away Plaintiffs' permits, or that opening the market effectively prevents them from using their licenses to do business in Milwaukee. Instead, the Complaint alleges that by allowing third parties to compete with Plaintiffs' businesses, Milwaukee has reduced the value of Plaintiffs' permits on the secondary market. There is no right to be protected from competition, and precedent is clear that the loss in value of taxi permits on the secondary market, where that value is derived from a protectionist permitting scheme, is not a valid property right.

Plaintiffs are not the first to advance the theory that the Fourteenth Amendment requires the government to either engage in permanent protectionism or pay for the diminution in the market value of a tradable license or benefit. Every federal court to consider these claims has squarely rejected them.

The single most helpful precedent here is the Eighth Circuit's decision in *Minneapolis Taxi Owners Coalition, Inc. v. City of Minneapolis*, 572 F.3d 502 (8th Cir. 2009). There, the City of Minneapolis, just like Milwaukee, had for years capped the number of taxi licenses and

allowed owners to sell the licenses on the secondary market. *Id.* at 504. Minneapolis then decided to deregulate the industry by removing the cap on licenses. *Id.* at 505-06. The owners of existing taxis did not lose their licenses; they simply lost the city-imposed monopoly on them and therefore their value as an artificially scarce resource. *Id.* at 506. And there, as here, the owners of the established taxi companies sued on the grounds that this diminution in value was unconstitutional. *Id.* In the Minneapolis case, the taxi companies argued a more specific (and arguably more plausible) claim that the diminution of their taxi permits constituted a taking without just compensation. *Id.* The Eighth Circuit rejected this argument and held that the Minneapolis taxi owners had no property interest in the secondary market value of the licenses. *Id.* at 509 ("[A]ny property interest that the taxicab-license holders may possess does not extend to the market value of the taxicab licenses derived through the closed nature of the City's taxicab market.").

Under *Minneapolis Taxi Owners*, Plaintiffs' due process claim necessarily fails. As in that case, Plaintiffs in this case are not faced with the loss of their licenses. They may continue in business and compete for riders alongside other taxis and alternative car services. Contrary to the Plaintiffs' legally erroneous allegations, *see* Compl. ¶ 52, Plaintiffs may even transfer or sell their licenses for whatever value those permits have. What is different is merely the fact that Milwaukee has decided to allow more competition in the transportation market. That is neither a taking nor a deprivation of property without due process.

Other cases addressing this issue accord with the Eighth Circuit's holding. *See, e.g.*, *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 274 (5th Cir. 2012) (taxi owners' takings challenge to new rules frustrating secondary market in taxicab licenses failed because "[s]uch an interest does not fall within the ambit of a constitutionally protected property right, for

it amounts to no more than a unilateral expectation that the City's regulation would not disrupt the secondary market value of [taxi licenses]"); *Members of the Peanut Quota Holders Ass'n, Inc. v. United States*, 421 F.3d 1323, 1335 (Fed. Cir. 2005) (ending federal peanut quota program not a taking because "the government does not forfeit its right to withdraw those benefits or qualify them as it chooses"); *accord Rogers Truck Line, Inc. v. United States*, 14 Cl. Ct. 108, 115 (1987) (deregulation of trucking industry, destroying secondary market in licenses for shipping, does not constitute a taking; "[i]t 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."); *Bowen v. Gilliard*, 483 U.S. 587, 604 (1987) ("Congress is not, by virtue of having instituted a social welfare program, bound to continue it at all, much less at the same benefit level.")

Nothing in the jurisprudence of either the Seventh Circuit or the State of Wisconsin justifies departing from these precedents. State law indeed confers a property right in a taxi permit *itself* which, once granted, may not be revoked in an arbitrary or capricious manner, *Corrao v. Mortier*, 4 Wis. 2d 492, 494-95, 90 N.W.2d 623, 625 (Wis. 1958). But the uncontroversial premise that one has a property right in one's permit is a far cry from the premise that one has an enforceable property right in being forever protected against competition that would reduce the transfer or sale value of that permit on a secondary market.

Moreover, even apart from this federal precedent, Plaintiffs' entire claim rests on the idea that they are entitled to continue to benefit from a local law that the state court has held unconstitutional. Even if Milwaukee had intended to grant the members of the city's taxi cartel a property right to be protected from competition (which it did not), the state court has declared exactly that protectionism to be unconstitutional and void. *See supra* p. 5 (final judgment in

Ibrahim v. City of Milwaukee). The Plaintiffs cannot turn to the federal courts for the restoration of a monopoly that the state court held should never have existed in the first place.

Plaintiffs' theory of their property rights contradicts the precedent cited above, and would also have sweeping effects on the ability of Milwaukee (or any other city) to reform its transportation regulations. It would effectively prohibit Milwaukee from adopting *any* regulatory changes that expose incumbent taxi permit holders to greater competition, whether by increasing the number of taxis permitted to operate in the city or by making it easier for other car services (such as town cars, limousines, or shuttles) to operate at all. Plaintiffs' due process claim for compensation should therefore be dismissed.

II. PLAINTIFFS' EQUAL PROTECTION AND VAGUENESS CHALLENGES ARE EASILY RESOLVED WITHOUT ADDITIONAL LITIGATION.

Intervenor-Defendants' primary interest in this case is ensuring that the provisions of the City's ordinance that eliminate the taxicab permit cap are preserved. That aspect of the new law upholds their right to earn a living and is mandated by the terms of the state-court injunction issued in 2013. However, Intervenor-Defendants wish to note that Plaintiffs' Equal Protection claim seeks a remedy that cannot be granted and that Plaintiffs' vagueness challenge can be simply resolved by the City's confirming the natural reading of its ordinance. Both of these claims can therefore be disposed of without significant additional litigation.

A. Plaintiffs Cannot, as a Matter of Law, Get the Remedy They Seek through Their Equal Protection Claim.

Plaintiffs claim that Milwaukee is violating the Constitution by allowing competition with taxis by Network Vehicle car services, such as Uber and Lyft. Compl. ¶ 1. This claim must fail because the Constitution's guarantee of equal treatment does not create a right to have one's business permanently protected against competition from business rivals. The proper remedy for an equal protection violation is to treat taxis better, not to order third parties to be shut down.

Equal protection claims are either demands by individuals to be treated as well as someone to whom they are similarly situated, or else not to be treated as if they are a member of a group to which they do not belong. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (equal protection demands that individuals be treated as well as someone to whom they are similarly situated); *Clayton v. Steinagel*, 885 F. Supp. 2d 1212, 1215 (D. Utah 2012) (equal protection demands individuals not be treated as members of a group to which they do not belong); *Cornwell v. Hamilton*, 80 F. Supp. 2d 1101, 1119 (S.D. Cal. 1999) (same).

Plaintiffs' Complaint fails to allege either of those claims. Plaintiffs do not indicate they want to be treated like anyone else; instead, they demand that *other people* be treated worse—specifically, that Network Vehicle affiliated car services that operate as alternatives to taxis be barred from competing with taxis. The Complaint is devoid of allegations that Plaintiffs want to do anything that current law forbids them from doing but allows others to do. They do not allege, for example, that they want to engage in alternative car service businesses and have been prohibited from doing so by law.[6]

Insofar as the Complaint reveals, there is nothing that Plaintiffs want to do that they cannot do. In fact, there is nothing preventing them from competing on a level playing-field with the newly-licensed Network Vehicle services. Instead, they allege the opposite: that there are things that *other people* (namely, alternative car services, including drivers for Uber and Lyft) are doing that Plaintiffs want to stop.

[6] This is the standard form of an equal protection challenge to economic regulations. *See, e.g.*, *St. Joseph Abbey v. Castille*, 712 F.3d 215, 219-20 (5th Cir. 2013) (reviewing equal protection challenge to prohibition on plaintiffs' selling caskets where licensed funeral directors could sell caskets); *Merrifield v. Lockyer*, 547 F.3d 978, 990-92 (9th Cir. 2008) (reviewing equal protection challenge to prohibition on plaintiff engaging in certain kinds of pest control without a license where equally dangerous pest control was allowed to proceed unlicensed).

In other words, Plaintiffs assert that they have been subjected to certain burdensome regulations, and they argue that this gives them an affirmative right to demand that the City of Milwaukee prohibit the operation of (allegedly) similarly situated business competitors.

This is not a cognizable claim. There is no equal protection right to demand that the government prevent someone from serving customers whose money a plaintiff would rather see in his own pocket. *See, e.g., Del Marcelle v. Brown Cnty. Corp.*, 680 F.3d 887, 901 (7th Cir. 2012) (en banc) (Easterbrook, J., concurring in judgment) (noting that the logic of refusing to acknowledge due process rights to have others arrested applies with equal force to equal protection claims); *McCauley v. City of Chicago*, 671 F.3d 611, 618 (7th Cir. 2011) ("Because the Equal Protection Clause is 'concerned . . . with equal treatment rather than with establishing entitlements to some minimum of government services, [it] does not entitle a person to adequate, or indeed to any, police protection.'") (quoting *Hilton v. City of Wheeling*, 209 F.3d 1005, 1007 (7th Cir. 2000)).

Plaintiffs' Complaint does not allege the existence of a similarly situated group that is receiving the kind of treatment the Plaintiffs demand. It instead alleges that Milwaukee's regulations treat cab owners and drivers badly, and that other people should therefore be treated just as badly. This is not a demand for the equal *protection* of the laws. It is simply an allegation that Milwaukee has declined to use its power to prohibit competition in a way that would benefit Plaintiffs' economic interests.

Indeed, it is worth noting that many federal courts have held that economic protectionism is not a legitimate use of governmental power. *See, e.g., St. Joseph Abbey*, 712 F.3d at 222-23; *Merrifield*, 547 F.3d at 991 n.15; *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002). Plaintiffs' invention of a countervailing equal protection right—one that would allow them to

affirmatively demand economic protectionism—has no foundation in the caselaw and should be rejected. Importantly, in 2013 a Wisconsin state court enjoined the very protectionist ordinance that was repealed and replaced by the 2014 ordinance that Plaintiffs are now trying to nullify.

This Court need not even decide whether the City's current taxi regulations have a rational basis or whether the Plaintiffs are actually similarly situated to new taxicab drivers or Network Vehicle drivers; instead, it need only hold that, to the extent the Complaint alleges an Equal Protection violation, that violation can be invoked to *prevent* the prosecution of the Plaintiffs, not to *demand* the prohibition of competition from other car services. *See St. Joseph Abbey*, 712 F.3d at 219-20 (stating plaintiffs sought declaratory and injunctive relief against state board's enforcement of licensing law against them); *Del Marcelle*, 680 F.3d at 901 (a valid equal protection claim requires a party "to show how he was injured by what defendants did *to* him, rather than by what they didn't do to other people or what they didn't do *for* him").

The remedy sought by Plaintiffs—the prohibition of competition from other car services—is simply not available as a matter of law.

B. The Vagueness Challenge Can Be Resolved by the City Committing to Not Punish Plaintiffs and Other Taxi Drivers for Operating "Network Vehicles."

Plaintiffs claim that the new ordinance is unconstitutionally vague because, they allege, it is not clear whether traditional taxi cab drivers must follow certain regulations that apply to taxi cabs or whether they should follow the regulations that apply to alternative car services. *See* Compl. ¶¶ 2, 47-48. Plaintiffs hypothesize, for instance, that the City could fine or even arrest a traditional taxicab driver who accepted and charged passengers for rides using the same type of "app-based" or electronic platform that is used by alternative car services such as Lyft and Uber. Compl. ¶ 2. However, this straightforward matter of statutory interpretation can be resolved by the City without further litigation by the City committing to an interpretation of its ordinance.

The ordinance defines a taxicab as "a public passenger vehicle . . . which operates without a fixed route or schedule and which is available for hire upon demand for service including by hail on the street, or upon telephonic or other electronic request." MCC § 100-4-27. It further specifies that "Network Vehicles" are "public passenger vehicle[s] operated as a taxicab under contract service arranged through a network company." Ex. 6, § 100-3-14. A "Network Company" means "a transportation company or business that uses an online, digital or electronic platform to connect passengers with network vehicles operated by public passenger vehicle drivers." *Id.* § 100-3-13.

As Intervenor-Defendants read the ordinance, if a traditional taxi driver picks someone up on the street, he must charge the metered fare and follow other applicable regulations; if the same driver is contracted with a "Network Company" and gets a customer through an electronic platform operated by that company (whether from Uber, Lyft, or an electronic platform created by the taxi company to compete with those alternatives), he may charge what the Network Company's contract with the customer permits.

The vagueness issue can be resolved without further litigation if the City commits to an interpretation of the ordinance that precludes the doomsday scenario hypothesized by Plaintiffs, and agrees not to impose punishment on traditional taxicab drivers who choose to operate their cabs as Network Vehicles by contracting service through a Network Company.

CONCLUSION

The City lost a case that found its cap on the number of taxicabs to be unconstitutional and it duly changed its law. This allowed the Intervenor-Defendants, and many other taxi drivers, to finally exercise their right to earn an honest living free from the City's protectionist cap. Plaintiffs have no right to keep these unconstitutional protections in place. Plaintiffs' claim

to compensation under the Due Process Clause should be dismissed, and their other claims are easily resolved without additional litigation.

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Respectfully submitted,

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