

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

KEN’S CAB,LLC, and
KEN LEININGER,

PLAINTIFFS

vs.

Case No. _____

CITY OF LITTLE ROCK

DEFENDANT

COMPLAINT

This civil rights lawsuit seeks to vindicate Plaintiffs’ rights under the Arkansas Constitution to operate free from protectionist, arbitrary and irrational government regulation. Plaintiffs want to bring safe, reliable and environmentally friendly taxi services to Little Rock, but are unable to secure taxicab permits to operate because of a “public convenience and necessity” requirement that protects a monopoly for the only existing taxicab company in the city. In other words, Little Rock has only one taxi company, and it is illegal to start a second one. This rule directly harms the people of Little Rock by arbitrarily limiting the choice of taxi service providers to one private company. It also destroys economic opportunities and job creation by preventing entrepreneurs from entering the city to compete. Preventing Plaintiffs from operating in Little Rock on the basis of the city’s protection of a taxicab monopoly violates the Arkansas Constitution’s prohibition on monopolies and guarantees of due process and equal protection.

Therefore, Plaintiffs Ken’s Cab, LLC, and Ken Leininger, by and through their undersigned counsel, hereby file this Complaint and sue the City of Little Rock as follows:

THE PARTIES

1. Ken’s Cab, LLC (“Ken’s Cab”), is an Arkansas limited liability company located in, and conducting business in, Pulaski County, Arkansas.

2. Plaintiff Ken Leininger is an Arkansas citizen and is the sole owner of Plaintiff Ken's Cab.

3. Defendant City of Little Rock("Little Rock") is a municipal corporation incorporated under the laws of the State of Arkansas and located in Pulaski County, Arkansas.

JURISDICTION AND VENUE

4. At all times pertinent to this action, the acts complained of have occurred in, or are occurring in, Pulaski County, Arkansas.

5. This action arises under Article II, Section 19(Perpetuities and monopolies), Section 8 (Due process), Section 3 (Equality before the law), and Section 2 (Freedom and independence) of the Arkansas Constitution.

6. This Court has jurisdiction over declaratory judgment actions pursuant to Arkansas Declaratory Judgment Act, Arkansas Code Annotated §§ 16-111-102, -103, and -104.

7. Venue is proper in this circuit, as the majority of the parties are located in this circuit and the dispute arose in this circuit.

STATEMENT OF FACTS

Plaintiffs Ken's Cab and Leininger

8. For eight years, Plaintiff Leininger was employed as a taxi driver for Greater Little Rock Transportation Services, LLC ("Yellow Cab").

9. Yellow Cab controls all of the taxi permits in Little Rock.

10. Yellow Cab has a monopoly over the Little Rock taxi market.

11. As a result of his time as a taxi driver in Little Rock, Plaintiff Leininger decided to create a safe, reliable, and environmentally-friendly taxi service.

12. In March 2015, Plaintiff Leininger left Yellow Cab on good terms.

13. In April 2015, Plaintiff Leininger started Ken's Cab in North Little Rock to help meet the demand for taxicab services in the greater Little Rock area.
14. Plaintiff Leininger started Ken's Cab with one hybrid vehicle.
15. Shortly thereafter, Plaintiff Leininger expanded Ken's Cab with two additional drivers and two additional hybrid vehicles.
16. Ken's Cab owns all of its vehicles.
17. Ken's Cab exclusively uses hybrid vehicles to provide fuel-efficient, environmentally friendly transportation.
18. Like Yellow Cab, Ken's Cab uses independent-contractor drivers, who lease vehicles from the company and also pay for their own gas.
19. Ken's Cab charges a lower daily lease rate to its drivers than the amount charged by Yellow Cab.
20. The taxi drivers for Ken's Cab pay less in fuel charges than the drivers for Yellow Cab.
21. Consequently, taxi drivers for Ken's Cab retain more of their income than taxi drivers for Yellow Cab.
22. Since Ken's Cab was established, the business has grown a loyal customer base in Pulaski County.
23. Ken's Cab operates in North Little Rock and in other areas outside of Little Rock.
24. Ken's Cab has not faced any regulatory problems or impediments in North Little Rock.
25. Ken's Cab has not faced any regulatory problems or impediments in any municipality other than Little Rock.

26. Little Rock Fleet Services Department (“Fleet Services”) is the Little Rock governmental department responsible for new taxi permits.

27. On or around April 9, 2015, concurrently with starting the business, Plaintiffs Leininger and Ken’s Cab submitted their application for taxi permits to Fleet Services.

28. Little Rock has numerous requirements for taxi permits, most of which are not being challenged by this lawsuit.

29. The taxi permit requirements that are challenged by this lawsuit are currently located in § 34-38(c)(11)(f) of the Little Rock, Arkansas Code of Ordinances (collectively, the “Monopoly Rule”).

30. The Monopoly Rule includes two subsections.

31. Subsection one of the Monopoly Rule imposes the criterion of “[w]hether the requirements of public convenience and necessity can be met and complied with only by the issuance of additional permits.” Monopoly Rule at § 34-38(c)(11)(f)(1).

32. Subsection two of the Monopoly Rule requires a determination of the “resulting effect upon the business of existing permit holders and upon existing agencies of mass transportation in the city.” Monopoly Rule at § 34-38(c)(11)(f)(2).

33. The Monopoly Rule prevents taxi permits from being issued to any business other than Yellow Cab.

34. Ken’s Cab and Leininger met all of the taxi permit requirements other than the Monopoly Rule.

35. Fleet Services admitted that Ken’s Cab and Leininger met all of the taxi permit requirements other than the Monopoly Rule.

Little Rock Enforces the Monopoly Rule

36. Little Rock requires taxi businesses to obtain a Little Rock taxi permit for each vehicle used for the purpose of providing ground transportation services for hire.

37. Little Rock enforces its taxi permit requirements.

38. Little Rock will not issue a taxi permit if the Little Rock taxi permit requirements are not met.

39. Without a Little Rock taxi permit, a taxi business cannot lawfully pick up any new customers in Little Rock.

40. Little Rock enforces the requirement that taxis may not pick up any new customers in Little Rock without a Little Rock taxi permit.

41. Yellow Cab's owner asked Fleet Services to reject Plaintiffs' application for Little Rock taxi permits.

42. In May 2015, Fleet Services rejected Plaintiffs' application for Little Rock taxi permits.

43. The regulatory basis for Fleet Services' rejection of Plaintiffs' application was the Monopoly Rule.

44. Fleet Services admitted that the basis for the rejection was the Monopoly Rule.

45. But for the Monopoly Rule, the Little Rock taxi permits would have been granted to the Plaintiffs.

46. Fleet Services admitted that, but for the Monopoly Rule, the Little Rock taxi permits would have been granted to the Plaintiffs.

47. Plaintiffs appealed the denial of their Little Rock taxi permit application to Little Rock's Board of Directors.

48. As part of Plaintiffs' appeal, Plaintiffs submitted testimonials from numerous loyal customers.

49. Plaintiffs' appeal was heard by Little Rock's Board of Directors during its meeting (the "Board Meeting") on October 20, 2105.

50. During the Board Meeting, Fleet Services' representative and the Board of Directors discussed the fact that the Little Rock taxi market was a monopoly.

51. During the Board Meeting, members of the Little Rock Board of Directors used the word "monopoly" to describe the Little Rock taxi market.

52. During the Board Meeting, members of the Board of Directors discussed the fact that the monopoly was a result of Little Rock's Monopoly Rule.

53. During the Board Meeting, Yellow Cab's owner asked the Board of Directors to reject Plaintiffs' appeal.

54. During the Board Meeting, the Board of Directors rejected the Plaintiffs' appeal.

55. During the Board Meeting, one member of the Board of Directors suggested that the Plaintiffs address the Board again during the Board's December 15, 2015 meeting when the Board was scheduled to renew Yellow Cab's taxi permits for the following year.

56. On December 14, 2015, Fleet Services told Plaintiff Leininger, both verbally and through email correspondence, not to attend the December 15, 2015 Board meeting, as the previous Board decision was final and could only be reviewed by the Board again pursuant to a new application based on new evidence.

57. Plaintiffs have no new evidence related to the reasons why their Little Rock taxi permit application was rejected.

58. But for the Monopoly Rule, Plaintiffs would reapply for Little Rock taxi permits.

59. It would be futile for Plaintiffs to reapply for Little Rock taxi permits while the Monopoly Rule remains in effect.

There is No Legitimate Basis for the Monopoly Rule

60. The Monopoly Rule does not advance any legitimate governmental interest.

61. Upon information and belief, Defendant Little Rock possesses no evidence that the Monopoly Rule advances any legitimate governmental interest.

62. There are currently 120 taxi permits issued by Little Rock.

63. Little Rock has exclusively granted all of the Little Rock taxi permits to one private company: Yellow Cab.

64. Yellow Cab does not use all of its Little Rock taxi permits, but nonetheless objects to the Plaintiffs using the unused permits.

65. The Monopoly Rule does not promote or protect public health, safety or welfare.

66. Defendant Little Rock has no evidence that the Monopoly Rule promotes or protects public health, safety or welfare.

67. The Monopoly Rule is irrational.

68. The Monopoly Rule is arbitrary.

69. In applying the Monopoly Rule, Defendant Little Rock arbitrarily protects the one established business from competition at the public's expense.

70. In enacting and enforcing the Monopoly Rule, Defendant Little Rock irrationally treats similarly-situated businesses differently.

71. Defendant Little Rock's enactment and enforcement of the Monopoly Rule effectively creates two classes of businesses: the one who was able to obtain taxi permits because it was there first, and those who come after who cannot obtain permits. Only the first class is

allowed to lawfully operate a taxi business in Little Rock, and there is no definitive way to move from the second class into the first. There is no rational basis for this arbitrary distinction.

72. Defendant Little Rock's taxicab permitting practice violates the Plaintiffs' rights under the Arkansas Constitution by arbitrarily determining who can receive a permit and creating a permanent class of one established taxi service that is protected from new competition.

Harm to Plaintiffs Ken's Cab and Leininger

73. But for the Monopoly Rule, Plaintiffs would currently have Little Rock taxi permits.

74. But for the Monopoly Rule, Plaintiffs would currently be operating in Little Rock.

75. If the Monopoly Rule were rescinded or invalidated, Plaintiffs would immediately reapply for Little Rock taxi permits.

76. If the Monopoly Rule were rescinded or invalidated, Plaintiffs' reapplication for Little Rock taxi permits would be granted.

77. It is futile for Plaintiffs to reapply for Little Rock taxi permits while the Monopoly Rule continues to be enforced.

78. Every day the Monopoly Rule remains in effect, Plaintiffs suffer irreparable harm.

Harm to the Citizens of Little Rock

79. Many cities have vibrant taxi industries without a Monopoly Rule.

80. The Monopoly Rule creates a completely unnecessary protectionist barrier to competition by forbidding other taxi services from operating in the city.

81. The Monopoly Rule prevents consumers from being able to choose a taxi service other than Yellow Cab.

82. The Monopoly Rule has the effect of preventing consumers from being able to choose to hire an environmentally friendly, hybrid taxi.

83. The Monopoly Rule prevents entrepreneurs from being able to operate in Little Rock.

84. The Monopoly Rule deprives taxi drivers of the ability to choose between multiple taxi companies and instead forces them to work for Yellow Cab.

85. The Monopoly Rule deprives taxi drivers of the ability to retain more of their income by driving for Ken's Cab instead of Yellow Cab.

86. The Monopoly Rule restricts innovation.

87. The Monopoly Rule prevents job creation.

**COUNT I – VIOLATION OF THE ARKANSAS CONSTITUTION'S
PROHIBITION AGAINST MONOPOLIES**

88. Plaintiffs reassert and reallege paragraphs 1 through 87 as if fully stated herein.

89. Article II, Section 19 of the Arkansas Constitution expressly declares that "monopolies are contrary to the genius of a republic, and shall not be allowed."

90. Defendant Little Rock, through §§ 34-38(c)(11)(f)(1) & (2) of the Little Rock, Arkansas Code of Ordinances, arbitrarily grants a monopoly to one private taxi company.

91. Defendant Little Rock intentionally denies competitors the opportunity to acquire taxi permits.

92. Defendant Little Rock intentionally protects Yellow Cab's monopoly to the detriment of the consuming public of Little Rock.

93. This arbitrary and protectionist ordinance shields existing permit holders from competition by denying Ken's Cab the opportunity to operate in Little Rock.

94. Protectionism is not a constitutionally legitimate basis for prohibiting Ken's Cab from operating its taxi business in Little Rock.

95. As the Monopoly Rule appears to violate Article II, Section 19 of the Arkansas Constitution, Plaintiffs seek declaratory relief regarding the validity of the Monopoly Rule and the status of Plaintiffs' rights under Article II, Section 19 of the Arkansas Constitution.

96. Defendant Little Rock's violations of Article II, Section 19 of the Arkansas Constitution have caused irreparable harm to the Plaintiffs.

97. Unless the City of Little Rock is permanently enjoined from committing the above-described violations of the Arkansas Constitution, the Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

**COUNT II – VIOLATION OF THE ARKANSAS CONSTITUTION'S
GUARANTEE OF DUE PROCESS**

98. Plaintiffs reassert and reallege paragraphs 1 through 87 as if fully stated herein.

99. Article II, Section 8 of the Arkansas Constitution guarantees due process to the Plaintiffs.

100. The rights protected by Article II, Section 8's due process clause include the rights to liberty and property.

101. The protected rights also include, but are certainly not limited to, the right "of acquiring, protecting and possessing property" listed in Article II, Section 2 of the Arkansas Constitution.

102. The Monopoly Rule violates the Plaintiffs' right to due process under the Arkansas Constitution.

103. Protectionism is not a constitutionally legitimate basis for prohibiting the Plaintiffs from operating their taxi business in Little Rock.

104. As the Monopoly Rule appears to violate Article II, Sections 2 and 8 of the Arkansas Constitution, Plaintiffs seek declaratory relief regarding the validity of the Monopoly Rule and the status of Plaintiffs' rights under Article II, Section 2 and 8 of the Arkansas Constitution.

105. Defendant Little Rock's violations of Article II, Sections 2 and 8 of the Arkansas Constitution have caused irreparable harm to the Plaintiffs.

106. Unless Defendant Little Rock is permanently enjoined from committing the above-described violations of the Arkansas Constitution, the Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

**COUNT III – VIOLATION OF ARTICLE II, SECTION 3 OF THE ARKANSAS
CONSTITUTION – EQUALITY BEFORE THE LAW**

107. Plaintiffs reassert and reallege paragraphs 1 through 87 as if fully stated herein.

108. Article II, Section 3 of the Arkansas Constitution guarantees equal protection under the law.

109. The Monopoly Rule treats similarly situated businesses differently.

110. The Monopoly Rule draws an arbitrary, irrational and illegitimate distinction between the one taxi company that is permitted to operate in Little Rock and those that cannot.

111. As a direct result of this distinction between the one business that can lawfully operate a taxi company and those that cannot, the Plaintiffs are prevented from operating their taxi service to Little Rock.

112. Protectionism is not a constitutionally legitimate basis for prohibiting the Plaintiffs from operating their taxi business in Little Rock.

113. As the Monopoly Rule appears to violate Article II, Section 3 of the Arkansas Constitution, Plaintiffs seek declaratory relief regarding the validity of the Monopoly Rule and the status of Plaintiffs' rights under Article II, Section 3 of the Arkansas Constitution.

114. Defendant Little Rock's violations of Article II, Section 3 of the Arkansas Constitution have caused irreparable harm to the Plaintiffs.

115. Unless Defendant Little Rock is permanently enjoined from committing the above-described violations of the Arkansas Constitution, the Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

RELIEF SOUGHT

WHEREFORE, Plaintiffs Ken's Caband Leininger request that this Court:

- A. Enter a declaratory judgment that the Monopoly Rule violates Article II, Sections 19, 8, 2, and 3 of the Arkansas Constitution;
- B. Enter an order permanently enjoining Defendant Little Rock from considering the Monopoly Rule in determining whether to grant taxi permits;
- C. Award Plaintiffs Ken's Caband Leininger nominal damages in the amount of one dollar;
- D. Award Plaintiffs Ken's Caband Leininger their reasonable costs; and
- E. Award Plaintiffs Ken's Caband Leininger any other relief as is appropriate under the circumstances.

DATED this 2nd day of March, 2016.

Respectfully submitted,

By: /s/ Christopher Burks

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*Applications for Admission *Pro Hac Vice* filed
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