DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

2001 MAY 16 P 1:17

WILLIAM A. CLUTTER d/b/a BC Transportation Consultants, Petitioner, vs. TRANSPORTATION SERVICES AUTHORITY OF NEVADA, Respondent	Case No. A386841 Dept. No. III
WILLIAM A. CLUTTER d/b/a BC TRANSPORTATION CONSULTANTS; JOHN W. WEST JR. d/b/a AAA LIMOUSINE SERVICE; INDEPENDENT LIMOUSINE OWNER/ OPERATORASSOCIATION, on its own behalf and on behalf of its members including but not limited to KEN BEAUDET, EDWARD WHEELER, and REY VINOLE, Plaintiffs, vs. STATE OF NEVADA, on relation of the Transportation Services Authority, THE TRANSPORTATION SERVICES AUTHORITY,an agency of the State of Nevada; PAUL J. CHRISTENSEN, Chairman/Commissioner of the Transportation Services Authority, in his official capacity; SANDRA LEE AVANTS, and BRUCE H. BRESLOW, Commissioners of the Transportation Services Authority, in their official capacities, Defendants, SUN CAB, INC., d/b/a AMBASSADOR LIMOUSINES, STAR LIMOUSINE, L.L.C., and BELL TRANS, Intervenors.	Case No. A387827 Dept. No. III

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DECISION

THIS MATTER, was tried before this Court without a jury; Plaintiffs appeared by and through their counsel, Mark W. Patterson, Esq., of the law firm of Kolesar & Leatham, Chtd., and Dana Berliner, Esq, and Clark Neily, Esq., of the Institute for Justice. Defendants the State of Nevada, the Transportation Services Authority, an agency of the State of Nevada (hereinafter "TSA"). Paul J. Christensen, Chairman/Commissioner of the TSA in his official capacity (hereinafter "Christensen"), Sandra Lee Avants, Comissioner of the TSA in her official capacity (hereinafter "Avants"), and Bruce H. Breslow, Commissioner of the TSA in his official capacity (hereinafter "Breslow"), appeared by and through their counsel, Brent D. Michaels, Deputy Attorney General, and Charlotte Matanane Bible, Senior Attorney General. Intervenor Sun Cab, Inc., d/b/a Ambassador Limousine (hereinafter "Ambassador") appeared by and through its counsel, Robert A. Winner, Esq., and Brent Carson, Esq. Intervenor Bell Trans appeared by and through its counsel, Jeffrey A. Silver, Esq., and Gregory E. Garman, Esq. Intervenor Star Limousine (hereinafter "Star") appeared by and through its counsel, Eric K. Taylor, Esq. and Jill M. Klein, Esq. The Court having heard and considered the testimony, documentary evidence, argument of counsel, Plaintiff's Offer of Proof and the parties' proposed post-trial Findings of Fact and Conclusions of Law hereby enters the following Decision.

As to Counts I & II of Plaintiffs Complaint, the Court finds the combined actions of Defendants TSA, Ambassador, Bell Trans and Star (hereinafter "Intervenors") violated Plaintiffs Rey Vinole, John West and Ed Wheeler Due Process rights under the 14th

Amendment and the Nevada Constitution. The Court finds that, in its application, the "unreasonable and adverse" impact requirement under NRS 706.391(2)(c), and the financial fitness requirements under NRS 706.391(2)(a), do not, taken alone, constitute a violation of Plaintiffs' Due Process rights. However, when taken in conjunction with the intervention process and the unrestricted role of the intervenors in this case, the TSA's application of these provisions amount to an arbitrary and unreasonable process by which the applicants, Rey Vinole, John West and Ed Wheeler were forced to either withdraw their applications, agree to limit the operational scope of their proposed CPCNs, or incur increasing litigation fees and costs in order to comply with the numerous financial information and disclosure demands made by the TSA as well as the intervening carriers. Accordingly, in considering the application of the statutory licensing scheme and its requirements codified under NRS 706, et seq., in the aggregate, the Court finds that the Due Process rights of Rey Vinole, John West and Ed Wheeler, who applied for and were either denied or forced to withdraw their applications for CPCNs in this case, were violated under both the 14th Amendment and the Nevada Constitution.

As to the remaining causes of action stated herein as Counts III, IV, V, VI, VII and IX the Court finds that Plaintiffs have failed to satisfy their burden of proof. Accordingly, the Court enters a decision in favor of Defendants as to these remaining causes of action.

THE COURT'S FINDINGS

I. Substantive Due Process: Counts I and II

1. The right to earn a living in one's chosen profession is a liberty interest protected by the due process clauses of both the U.S. and Nevada constitutions. Conn v. Gabbert, 526 U.S.

286, 292-92 (1999); Doubles Ltd. v. Gragson, 535 P.2d 677, 679 (Nev. 1975). A substantive due process challenge receives only minimal scrutiny (rational basis) by the judiciary if the statute challenged does not implicate a suspect classification or fundamental right. Sereika v. State of Nevada, 114 Nev. 142 (1998); citing Bowen v. Gillard, 43 U.S. 587(1987).

2. The 14th Amendment's Due Process requires that there be a rational relationship between government-imposed restrictions and a legitimate government purpose. Romer v. Evans, 517 U.S. 620, 632 (1996); Cornwell v. Hamilton, 80 F. Supp.2d 1101, 1106 (S.D. Cal. 1999); State v. Glusman, 651 P.2d 639, 646 (Nev. 1982).

3. In determining whether a rational basis exists to justify government-imposed regulations, the Court is not limited to considerations of justifications actually asserted by the legislature. Sereika v. State of Nevada, supra, 114 Nev. 142.

4. Based upon the health, welfare and public safety of its citizens using the public highways, including common motor carriers, the State of Nevada has a rational basis for regulating the licensing of limousine operators. Checker, Inc. v. Public Service Commission, 84 Nev. 623 (1968).

5. Thus, in this case TSA's licensing scheme will not be invalidated unless it is determined that the aforementioned CPCN requirements, as applied to Plaintiffs are arbitrary or unreasonable.

6. In this case, Plaintiffs claim the requirement set forth in NRS 706.391(2)(c) that applicants seeking certification to operate limousines demonstrate their proposed service will not have an "unreasonable and adverse effect" on existing carriers violates due process as applied to Plaintiffs Ed Wheeler, John West and other similarly-situated applicants.

7. Plaintiffs also claim the requirement set forth in NRS 706.391(2)(a), NAC 706.1375, NAC 706.149 and NAC 706.152 that applicants seeking certification to operate limousines demonstrate that they are financially fit violates due process as applied to Plaintiffs Ed Wheeler, John West and other similarly-situated applicants.

8. Further, Plaintiffs claim that as applied to Plaintiffs Ed Wheeler, John West and other similarly-situated applicants, NRS 706.391(2)(c), NAC 706.3966, NAC 706.3967, NAC 706.3968 and NAC 706.3969 resulted in an arbitrary and unreasonable burden, as they were consequently forced to defend against intervening carriers during the CPCN application process. Thus, Plaintiffs claim that the application of these provisions resulted in a violation of their Due Process rights in this case.

A. Unreasonable and Adverse Effect

9. In the instant case, the Court finds that the Hirschfield Herpenwald index, which is used by the TSA to determine whether an "unreasonable and adverse" impact is caused by the issuance of a CPCN, actually employs a method that considers the economic effect on individual carriers by the new certification. Transcript., p. 737: l. 16 - 738: 12. However, the Court also finds that competition alone was never considered in determining whether there was an "unreasonable or adverse effect," and the Court was not presented with any evidence or testimony establishing that a Certificate of Public Convenience and Necessity (hereinafter "CPCN") application was denied on the basis that the applicant had failed to meet this burden. Id., p. 276: l. 6-8; p. 268: 5-8. Further, the underlying consideration given to the adverse economic effect resulting from a new applicant's certification is the cumulative effect on the local limousine industry, and not merely the interest of individual carriers in

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maintaining a market free of additional competition. Id., p. 844: l. 19 - 858: 17.

10. TSA's Manager of Transportation, Dennis Colling, recommended disapproval of Plaintiff Ed Wheeler's CPCN application on the basis that Mr. Wheeler failed to establish no unreasonable and adverse effect. Plaintiff's Exhibit 51 at 4018-19. However, no decision was ever made by TSA to deny Mr. Wheeler's CPCN application on these grounds, and in fact, Dennis Colling did not testify at the Wheeler hearing, and Mr. Wheeler's application was subsequently withdrawn in order to comply with the financial requirements under NRS 706. Transcript, p. 288: l. 9 - 289: 11.

11. As this Court noted during trial, Plaintiffs had not made an offer of proof that any of the Plaintiffs herein were actually denied the CPCN on the basis that their certification would have an "unreasonable and adverse impact." Id., p. 746: l. 7-9.

12. Based on the foregoing, the Court finds that Plaintiffs presented no evidence showing that Plaintiffs' CPCN applications were denied by TSA on the basis that Plaintiffs failed prove that their respective certification would have an "unreasonable and adverse impact." Accordingly, the Court finds that the "no unreasonable and adverse effect" provision under NRS 706.391(2)(c) does not, by itself, constitute an arbitrary or unreasonable burden as applied to Plaintiffs. Thus, the application of NRS 706.391(2)(c) did not, by itself, constitute a violation of Plaintiffs' Due Process Rights under the 14th Amendment and the Nevada Constitution.

B. Financial Fitness

13. Pursuant to NRS 706.391(2)(a), TSA generally requires applicants to submit detailed information concerning their finances in order to determine they meet the TSA's 20% equity

requirement Id., p. 1004: l. 13 - 1005:2; p. 1006: l. 4-11. Kellie Pister, a financial analyst at the TSA, testified that applicants are also required to show they have a "reasonable" current ratio. Id., p. 1022: l. 23. The TSA routinely requires CPCN applicants to provide personal financial records including tax returns and other tax records. Id.; p. 993: l. 17-21. The TSA further requires applicants to provide bank statements, loan documents, and vehicle titles. Id., p. 993: l. 12, 22-23, and 13.

14. The TSA also requires applicants to provide detailed information, in the form of a "pro forma financial statement" regarding their anticipated start-up and operating expenses. The TSA requires an applicant to provide anticipated expenses for such items as equipment leases, rent for office space, wages, costs of buying or leasing vehicles. Plaintiffs' Exhibit 71D; Transcript p. 1000: l. 4 - 1001: 24. The TSA can also require applicants to provide information regarding anticipated litigation expenses. Plaintiff's Exhibit 67A; Transcript, p. 997: l. 18 - 998: 3.

15. TSA demands this information from applicants because in evaluating an applicant's financial fitness, it is important for the TSA to have a comprehensive understanding of the expenses an individual expects to incur when they go into the business of operating a limousine company. Transcript., p. 1008: l. 2-7. The cost of applying for a CPCN from the TSA is a cost of going into business. Id., p. 1009: l. 20. While TSA officials have never requested that an applicant provide his or her anticipated costs of the application process, the TSA generally stands ready to help applicants who require assistance. Id. p. 1015: l. 22 - 1016:14; p.1014: l. 7-11; p. 1024: l. 16-22.

16. TSA financial analysts review financial data to determine whether an applicant will have

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the ability to maintain a fleet of vehicles, to maintain proper insurance coverage, and to maintain safely operated vehicles. Id., p. 682: l. 13-18. Dan Gabour, a financial analyst at the TSA, testified that the TSA also examines proposed rates to ensure they are compensatory and not predatory. Id., p. 683: l. 7-13. The evidence and testimony shows the financial requirements are applied evenly to all applicants, regardless of whether the application is contested or uncontested. Id., p. 681: l. 11-25.

17. The financial fitness requirements, including the 20% equity ratio and current ratio, among other things, are commonly used in the transportation industry to assess an applicant's solvency, managerial skills, his ability to follow rules and regulations, and the ability to maintain safe and insured vehicles. The pro forma statement and balance sheet required by the TSA help the regulators determine whether an applicant will be able to operate the proposed service with the proposed equipment, and whether the applicant will be able to provide a continuous service that benefits the traveling public. Id., p. 899: l. 2-901:24.

18. Prior tax returns are often requested by the TSA because they are prepared under penalty of perjury. Thus, they may be used as a "reality check" to assess the credibility of financial documents supplied by an applicant. Id., p. 905: l. 17 - 906: 2. Moreover, because these documents have already been prepared and submitted to a government agency, they generally impose no additional burden upon the applicant.

19. The evidence presented also supports Defendants' position that it is reasonable for a regulating body to restrict the number of vehicles a license holder may operate if there is a failure to show that such applicant lacks the requisite resources or experience. Id. p. 904: l. 16 - p. 911: 4.

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20. Accordingly, the Court finds that the various requests for financial disclosure propounded on Plaintiffs by the TSA pursuant to NRS 706.391(2)(a), which requires an applicant to demonstrate that he is financially fit, does not, by itself, constitute a violation of Plaintiffs' Due Process rights under the 14th Amendment or the Nevada Constitution.

C. The Intervenors

21. A certificated limousine carrier has a right to intervene in the application process where the carrier has established a direct and substantial interest in the proceedings. See NRS 706.391(2)(c), NAC 706.3966, NAC 706.3967 and NAC 706.3968. However, under the Nevada Administrative Code, NAC 706.3968; NAC 706.3969, TSA may nonetheless restrict the number of intervenors in a particular application as well as the role of the intervenors in the application process to avoid unduly broadening the issues, or to otherwise expedite the hearing.

22. In this case, as applied to Plaintiffs Rey Vinole, John West and Ed Wheeler, the Court finds that despite its authority under the Nevada Administrative Code, the TSA has failed to adequately regulate the number of intervenors in the process, or the scope of the intervenors' involvement in the application process after their Petition for Leave to Intervene had been granted.

23. Applicants are routinely encouraged to meet with the intervenors to resolve these concerns in an agreement to limit the operational scope of the proposed certification. However, the TSA generally remains inactive, and does not require any standards for intervenors regarding the scope or type of operational restrictions they may demand from the applicants. Transcript.; p. 485: l. 12 - 486:1; p. 495: l. 11-21; p. 111: l. 15-18. Ultimately, the only

alternative for many applicants who do not wish to make such a deal with the intervenors is to be "run to death in the paper mill" of a contested application proceeding. Id.; p. 205: 13-14.

24. Rey Vinole was advised by TSA representatives that his chances of obtaining a CPCN were greater if he resolved the scope of his proposed certification with the intervening limousine carriers. Id., p. 325: l. 3-5.

25. John West was also advised by TSA representative Dennis Collings that it would be in his best interest to agree to reduce the scope of his proposed certification with the intervenors. Id., p. 541: 18-20. TSA subsequently granted a continuance on Plaintiff John West's application for several months so that he could provide more detailed and accurate financial disclosure. Id., p. 573: l. 1- 574: 5. However, Mr. West failed to supplement his financial information, choosing instead to stand on what he had already submitted. Id., p. 574: l. 6-17. Accordingly, Commissioner Bruce Breslow could not recommend approval of Mr. West's application based upon Mr. West's failure to provide complete financial disclosure and the resulting finding of lack of financial ability. Id., p. 504: l. 4 - 506: 9. However, Mr. West incurred substantial costs during the application process, approximately $30,000, of which he personally paid $14,000. Id., p. 551: l. 19-21. Because of the inundating requests for disclosure made by both the TSA as well as intervening carriers, Mr. West concluded that he needed a lawyer and accountant to get through the application process. Id., p. 532: l. 5-15; 540: 6-8.

26. Ed Wheeler incurred expenses between $4,000 to $5,000 during one day of hearings before the TSA as a result of the various documentary requests made pursuant to NRS 706.391(2)(a) and (c). Yet, despite these costs, the TSA refused to consolidate the intervenors

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in Mr. Wheeler's application, although it had the discretion to do so. In addition, Chairman Christensen granted a late-filed Petition for Leave to Intervene from On Demand Sedan over the objections of Mr. Wheeler's counsel. Plaintiff's Exhibit 52A; Transcript, p. 1185: l. 24 - 1186: 11.

27. Defendants' expert, Professor Paul Dempsey, testified that it is common to allow parties to intervene in an administrative licensing process in which they have an economic interest. Professor Dempsey further testified that, in fact, due process demands that interested parties be allowed to intervene. Id., p. 898 l. 7-16. Nonetheless, this Court finds that the TSA has a duty under the statutes and administrative code sections to regulate and restrict both the number of intervenors in a particular case, as well as the scope of their involvement in the application process in a manner that is fair and equitable to both the intervenors as well as the applicants seeking a CPCN. The TSA has nonetheless failed to adequately supervise the application process in accordance with this duty, and its failure, in the applications of Rey Vinole, John West and Ed Wheeler, resulted in a onerous and costly burden on the applicant, which rises to the level of arbitrary and unreasonable.

28. Based on the evidence and testimony presented on this issue, the Court finds that while intervention by other certificated limousine carriers under NRS 706 and NAC 706 is not facially invalid, as applied to the specified Plaintiffs in this case in conjunction with the "unreasonable and adverse impact" and financial fitness requirements, the intervention process amounted to an onerous and unduly burdensome process by which the applicants were forced to either withdraw their applications, agree to limit the operational scope of their proposed CPCNs, or incur increasing litigation fees and costs in order to comply with the

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numerous financial information and disclosure demands made by the TSA as well as the intervening carriers. Accordingly, the Court finds that the Due Process Rights of Rey Vinole, John West and Ed Wheeler under both the 14th Amendment and the Nevada Constitution were violated in the application of the statutory licensing scheme and its requirements under the aforementioned statutes and its corresponding administrative code provisions.

II. Vagueness: Counts III and IV

29. Plaintiffs allege that TSA's policing and enforcement procedures are vague, and do not give TSA officers and agents notice of what conduct is prohibited under NRS 706, et seq.

30. Procedural due process requires the government to give notice of government action which would interfere with one's life, liberty or property. Schwartz v. Adams, 93 Nev. 240, 241, 563 P.2d 74, 75 (1977). As announced by both the United States Supreme Court and Nevada Supreme Court, a statute is unconstitutionally vague if and only if its terms are "so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application." Clark County Sheriff v. Luqman, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985); Connolley v. General Construction Co., 269 U.S. 385, 391 (1926).

31. In this case, TSA officers are not always able to determine what conduct was specifically prohibited as well as what class of common carriers were subject to regulation under the statute without the legal advice of the Attorney's General's office. Id., p. 80: 1-12; 14-17. However, it is generally recognized that neither the Nevada Constitution nor the U.S. Constitution require impossible standards of specificity. Luqman at 155; Washoe County Sheriff v. Vlasik, 111 Nev. 59, 61, 888 P.2d 441 (1995).

32. Plaintiff Ed Wheeler was ultimately compelled to stop operating under his interstate ICC

license because he was unable to get a consistent answer from the TSA concerning what jobs were intrastate, and therefore regulated by TSA, and which were interstate, and therefore not subject to TSA regulation. Id., p.1207: l. 19 - 1208: 3; 1192: 9 -1193:2. However, Mr. Wheeler would often take trips to the Arizona-Nevada state line and Hoover Dam deliberately, in order to avoid compliance with TSA regulations and NRS 706, et seq. Id., p. 1215: l. 19 - 1217: 19.

33. Plaintiff Jack Hutchens was stopped and searched repeatedly by TSA officials while using his limousine for his own personal benefit and that of his family. Id., p. 429: l. 3 - 434:15. On each of these occassions, however, Mr. Hutchens was never given a citation by TSA officials, nor was he ever arrested or charged with any violation. Id., p. 435: l. 20 - 437: 20.

34. Plaintiff and ILOA member Rich Lowre knowingly operated his limousine in violation of the statute, and in fact, did so with the belief that NRS 706, et seq. was "unjust." Also, other members of ILOA also knowingly violated the law by operating an uncertificated limousine service. Id., p. 155: l. 17-21.

35. Accordingly, the Court finds that Plaintiffs have not presented sufficient facts or evidence to support the allegation that the enforcement provisions of NRS 706, et seq. are impermissibly vague. Plaintiffs demonstrated a clear understanding of the enforcement provisions throughout the proceeding, but nonetheless acknowledged throughout trial that they repeatedly broke the law. Thus, the Court finds that Plaintiffs had notice of what conduct was prohibited, and whether the scope of their limousine service and activities fell under TSA and intrastate regulation.

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III. Biased Enforcement and Adjudication: Counts V and VI

36. In this case, Plaintiffs allege that the TSA adjudicative process is tantamount to an unconstitutional combination of judicial and executive functions, which in turn, creates an impermissible appearance of "bias" on the part of the TSA against those individuals prosecuted under NRS 706.

37. The TSA maintains two main accounts, numbered 3922 and 3923. Account 3923 is referred to by the TSA as the "fine account," and the sole source of funds for that account is proceeds from fines levied by the TSA. Id., p. 938: l. 20 -940: 7.

38. Plaintiffs claim that the amount of money collected in TSA's fine account in the fiscal year from 1998-1999 was $227,086, approximately 14.5% of the TSA's annual budget for that year. Plaintiff's Exhibit 89. However, the Court finds that the funds deposited into the fine account are designated solely for enforcement expenditures only, and neither the enforcement division of the TSA nor the Commissioners have control over how to make such expenditures. Any increases in those expenditures from the fine account must be submitted to the Governor for his approval through the Nevada Department of Administration, Budget Division pursuant to NRS 353.150. If the requests are approved by the Budget Division, it proceeds to the Legislative Council Bureau, which reviews the request to ensure there is sufficient justification to use the money. Additionally, pursuant to NRS 353.245, if the expenditure request is more than $20,000 and exceeds the legislatively approved budgeted amount by more than 10% or $50,000, which ever is less, then the request must also be approved by the Legislative Interim Finance Committee.

39. Procedural due process guarantees only that government will use a fair decision-making

process before taking any action which would impair a person's life, liberty or property interest. Herrera v. Collins, 506 U.S. 390, 436 (1993).

40. The standard for a biased law enforcement claim is the same under both the Nevada Constitution and the U.S. Constitution.

41. The combination of investigative and adjudicative functions does not in and of itself create an unconstitutional bias in administrative proceedings. Winthrow v. Larkin, 421 U.S. 35, 56, 95 S.Ct. 1456 (1975); Laman v. Nevada State Real Estate Advisory Commission, 95 Nev. 50, 57 (1997).

42. There is a general presumption of honesty and integrity in those serving as administrative adjudicators. Winthrow v. Larkin, 421 U.S. 35, 56, 95 S.Ct. 1456, 1469 (1975).

43. There is no set percentage or other objective standard for determining when an agency's interest in the fines it assesses crosses the due process threshold. Rather, the standard is whether the challenged procedure is one that would "offer a possible temptation to the average man as judge" to abandon neutrality. In re Ross, 656 P.2d 832, 835 (Nev. 1983). The Nevada Supreme Court has further acknowledged the danger presented by the possibility an agency "might be tempted to accumulate from heavy fines a large fund by which the running expenses" of the agency could be paid. In re Ross, 656 P.2d 832, 835; quoting Dugan v. Ohio, 277 U.S. 61, 64-65 (1928).

44. In this case, the Court finds that the TSA commissioners do not have a personal stake in levying administrative fines. The fines levied against individuals found to be in violation of NRS 706 are deposited into a separate fund that is designated for enforcement expenditures only.

45. The Court further finds that neither the enforcement division nor the Commission has control over how to spend the money in the fine account. Instead, in order to use funds from the fine account that are not already legislatively approved, it is necessary to seek the permission of the through the Budget Division pursuant to NRS 353.150. If the requests are approved by the Budget Division, it proceeds to the Legislative Council Bureau, which reviews the request to ensure there is sufficient justification to use the money. Additionally, pursuant to NRS 353.245, certain requests must also be approved by the Legislative Interim Finance Committee., a department of the executive branch, who scrutinizes the request to ensure the request is for enforcement purposes..

46. Accordingly, the Court finds that the statutory licensing scheme set forth in NRS 706, et seq. does not constitute an impermissible combination of executive and adjudicative functions, and therefore do not constitute an unconstitutional bias in TSA adjudicative proceedings.

IV. Privileges or Immunities: Count VII

47. It has been established by the U.S. Supreme Court that the "privileges and immunities" clause of the Fourteenth Amendment does not create a naked right to conduct business free of otherwise valid state regulation." Head dba Lea County Publishing Co. v. New Mexico Board of Examiners & Optometry, 374 U.S. 424, 432, 83 S.Ct. 1759, 1764 (1963). Instead, application of the privileges and immunities clause of the Fourteenth Amendment is exceptionally limited.

48. In modern application, the privileges and immunities clause only bars "discrimination against citizens of other states where there is no substantial reason for the discrimination

beyond the mere fact they are citizens of other states." Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 298, 118 S.Ct. 766, 775 (1998).

49. In the facts at hand, the Court agrees with Defendants' position that Plaintiffs have not alleged violation of the privileges and immunities clause based upon their state citizenship. Instead, Plaintiffs attempted to persuade this Court that they have a right to "earn an honest living in the occupation of their choice." Plaintiffs' argument bears no relation to constitutional precedent.

50. Accordingly, the Court finds that Plaintiffs have not set forth a valid claim under the privileges and immunities clause of the Fourteenth Amendment..

V. Interference With Valid Interstate Charters: Count IX

51. Plaintiffs failed to produce credible evidence that TSA enforcement agent wrongfully interfered with valid intrastate charters prior to their completion. As such, the Court finds that Plaintiffs failed to demonstrate that the TSA acted without authority and/or in violation of Plaintiffs' ICC license or charter.

NOW THEREFORE, IT IS HEREBY THE DECISION OF THIS COURT that Judgment is rendered in favor of Plaintiffs Rey Vinole, John West and Ed Wheeler in Counts I and II of the Complaint. Judgment is hereby rendered in favor of Defendants as to the remaining claims advanced by Plaintiffs herein.

DATED this 16th day of May, 2001.

RON PARRAGUIRRE

RON PARRAGUIRRE
District Court Judge

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