# IN THE COURT OF COMMON PLEAS WOOD COUNTY, OHIO

RINALDI MANAGEMENT	) Case No.
ASSISTANCE, LTD.	) The Honorable
D/B/A GREEN CAB,	)
14 Cook Dr.	)
Athens, Ohio 45701	) COMPLAINT FOR
	) <b>DECLARATORY AND</b>
Plaintiff,	) INJUNCTIVE RELIEF
VS.	)
	) Andrew R. Mayle
	) 210 South Front Street
CITY OF BOWLING GREEN,	) Fremont, OH 43420
A MUNICIPAL CORPORATION,	) Ohio Bar No. 0075622
304 North Church Street	)
Bowling Green, Ohio 43402	) Robert McNamara
	) Institute for Justice
Defendant.	) 901 N. Glebe Road, Suite 900
	) Arlington, VA 22203
	) Virginia Bar No. 73208
	) Application for Permission to Appear
	) Pro Hac Vice To Be Filed
	) Meagan Forbes
	) Institute for Justice
	) 520 Nicollet Mall, Suite 550
	<ul> <li>Minneapolis, MN 55402</li> <li>Minnesota Bar No. 0393427</li> </ul>
	,
	<ul> <li>Application for Permission to Appear</li> <li>Pro Hac Vice To Be Filed</li> </ul>
	) $\Gamma$ io fluc vice to be flued

### **INTRODUCTION**

This civil-rights lawsuit seeks to vindicate the right of a taxi business to operate free from protectionist, arbitrary and irrational government regulation. Plaintiff Green Cab wants to bring safe, reliable and innovative taxi services to Bowling Green, Ohio. The only thing standing in its way is an arbitrary cap on the number of taxicab permits imposed by Defendant City of Bowling Green ("City"), which limits the total number of taxis operating in the city to sixteen. Even worse, the City itself owns almost half of these permits and uses its permits to run a bus service—a service that openly acknowledges it is not a taxi service. The City has exclusively granted the remaining permits to two private companies, and no more permits are available. But for the hard cap on new taxi permits, Green Cab would be qualified to offer taxicab service in Bowling Green: Green Cab is fit, willing, and able to meet all of Bowling Green's requirements for taxicab services. Preventing Green Cab from operating in Bowling Green on the sole basis of the City's arbitrary and irrational cap on taxi permits violates the Ohio Constitution's guarantees of both due process and equal protection.

### JURISDICTION AND VENUE

1. Green Cab brings this action under Ohio Rev. Code Ann. §§ 2721.02, 2721.03, and 2721.13, as well as Article I, Sections 1, 2, 16, and 19 of the Ohio Constitution.

This Court has jurisdiction over the City of Bowling Green pursuant to Ohio Rev.
 Code Ann. § 2305.01 and Ohio Rev. Code Ann. § 715.01.

Venue is proper in Wood County pursuant to Rule 3 of the Ohio Rules of Civil
 Procedure.

#### THE PARTIES

4. Plaintiff Rinaldi Management Assistance, Ltd., which does business as "Green Cab," is a limited liability corporation in good standing under the laws of Ohio.

5. Defendant City of Bowling Green is a municipal corporation organized under the laws of the State of Ohio.

### **STATEMENT OF FACTS**

## Green Cab's Experience in Athens, Ohio

6. John Rinaldi is a long-time Ohio entrepreneur residing in Athens, Ohio, and the sole owner of Green Cab.

7. After working in the airline industry for several years, Rinaldi had a vision to use his experience from the airline industry and his knowledge of the Athens community to bring safe, reliable, and affordable taxi rides to Athens.

8. Although the City of Athens requires taxi businesses to obtain taxicab permits, it does not limit the number of permits available. In practice, the City of Athens grants permits to all applicants who satisfy basic licensing requirements, such as obtaining insurance and passing a vehicle inspection. This means that when Rinaldi wanted to start his taxi business in Athens, he could.

9. In August 2012, Rinaldi obtained taxicab permits from the City of Athens.

10. In October 2012, Rinaldi started Green Cab.

11. Green Cab offers \$3-a-head rides in central Athens (around Ohio University itself), and \$6-a-head rides over a greater distance.

12. Green Cab uses an advanced computer dispatch system in Athens to efficiently manage drivers and customers 24 hours a day, seven days per week.

13. Green Cab owns all of its own vehicles and exclusively uses Toyota Priuses to provide fuel-efficient, environmentally friendly transportation.

14. Green Cab uses mostly independent-contractor drivers, who lease Green Cab's vehicles at the low rate of ten cents per mile. Green Cab pays for gas and maintenance of the vehicles, and Green Cab and the drivers share the money earned in fares. Drivers, though, keep all their own tips.

15. This system results in significant compensation for drivers, which has allowed Green Cab to be selective in hiring only highly qualified drivers. Many of Green Cab's drivers are recent graduates or students at Ohio University. Green Cab expects drivers to maintain a high degree of professionalism on the job.

16. Before Green Cab was founded, hardly any taxis served the Athens, Ohio area.

17. Since Green Cab's inception, the business has grown rapidly. Green Cab now has a fleet of 12 environmentally-friendly vehicles in Athens and has created economic opportunities for more than 30 drivers.

18. Notably, since Green Cab began offering its service, none of the pre-existing transportation businesses in Athens has gone out of business.

19. Instead, Green Cab's reliable service in Athens has induced demand for taxis that was not previously present.

20. As many as nine Green Cab vehicles operate at any one time in Athens, depending on demand.

21. Green Cab's experience in Athens revealed that the highest demand for taxi service in that city is on evenings and weekends, specifically Thursday, Friday, and Saturday nights.

22. Green Cab has become an integral part of the Athens community. Green Cab is especially popular among Ohio University students.

23. The city of Athens has benefitted from an increase in safe and affordable transportation options in the community.

24. Green Cab believes its business model will work equally well in other college towns similar to Athens.

25. After conducting market research, Green Cab identified Bowling Green as a city in need of modern transportation options.

26. Bowling Green's population is comparable to the population of Athens.

27. Bowling Green, like Athens, is home to a large state university.

28. Bowling Green, like Athens did before Green Cab was founded, has severely limited on-demand transportation options.

29. Bowling Green, like Athens did before Green Cab was founded, has a particular need for taxi services on the evenings and weekends, specifically Thursday, Friday, and Saturday nights.

30. Because of these similarities between the cities, in late 2014, Green Cab decided to approach the City of Bowling Green about providing a taxi service in Bowling Green.

# Green Cab's Experience in Bowling Green, Ohio

31. When Green Cab approached the City of Bowling Green about bringing its innovative taxi service to the city, it discovered that the City caps the number of available taxicab permits. City officials discouraged Green Cab from applying for a permit.

32. Despite this cap, Rinaldi and Green Cab's manager, Chris Meek, learned that one taxicab permit was available. They took all the steps necessary to satisfy the City's requirements for Green Cab to obtain a taxicab permit, including securing the requisite insurance, having their drivers submit to physical examinations and identifying property to lease within the city limits. They made

several trips to Bowling Green during this time and also developed marketing materials specific to Bowling Green.

33. On or around November 20, 2014, Meek personally delivered Green Cab's application to the City. When Meek submitted the application, a city employee laughed at him and said that applying for a taxicab permit was a waste of time and money.

34. On or around November 25, 2014, the City's Taxicab Board of Review held a meeting to evaluate Green Cab's application. Despite the fact that Green Cab had satisfied the requirements to obtain a permit, the Taxicab Board determined that Green Cab was unqualified at that time because it had applied for three permits when only one was available and because its current address listed on its application was not in Bowling Green. At the meeting, the Taxicab Board cautioned city officials that it would be inappropriate to respond to any of Green Cab's future inquiries about obtaining a permit.

35. On January 14, 2015, the City, through legal counsel, informed Green Cab that its application had been denied and that no more taxicab permits were available because of the cap.

36. On information and belief, although one permit was available at the time Green Cab applied for the permit, the City held an unannounced Taxicab Board meeting in January 2015 and gave the only remaining permit to Supercab, a company that already held six permits.

37. In addition, the City, through legal counsel, further advised Green Cab that there were no scheduled Taxicab Board meetings, as no more permits were available because of the cap.

38. The City's cap on the number of taxicab permits prevents Green Cab from offering its services in Bowling Green.

39. Apart from the hard cap on the number of taxicab permits, Green Cab is ready, willing, and able to meet all of Bowling Green's regulatory requirements for taxicab services.

40. To the extent Green Cab does not currently meet all of Bowling Green's regulatory requirements for taxicab services, it is only because meeting these requirements would be futile in light of the cap on permits. For example, Green Cab does not currently own or lease any space in the City of Bowling Green, but—in the absence of the permit cap—it would immediately obtain such space. In fact, before being informed by Bowling Green's counsel that no taxi permits would be made available to it, Green Cab had actually identified suitable property in Bowling Green and negotiated a lease. The only reason it did not execute that lease was that it learned doing so would be futile.

41. In short, the only legal obstacle to Green Cab successfully offering its taxi services in Bowling Green is the City's hard cap on the number of permits.

# The City of Bowling Green's Taxicab Permit Cap

42. The City requires all taxicab vehicles to obtain a permit before the vehicle may operate as a taxi service in Bowling Green. Bowling Green, Ohio Code of Ordinances, § 114.15. Each permit allows one vehicle to operate as a taxicab. *Id*.

43. Certain requirements must be met to apply for a permit. These requirements include obtaining a certificate of insurance in the amount of \$500,000, having a business address within the city, requiring drivers to undergo physical examinations and submitting to a vehicle inspection and police investigation. *Id.* at § 114.04, § 114.05, § 114.08(B), § 114.09, § 114.15(A). This lawsuit challenges none of these requirements.

44. Even if an applicant satisfies these requirements, however, an applicant cannot obtain a taxicab permit unless a permit is available. The City limits the number of taxicab permits to one permit per 2,000 residents. *Id.* at § 114.15(A). The population figure is based on the most recent

federal census. *Id.* This ordinance prevents the City from issuing new taxicab permits and effectively caps the number of taxicabs available in Bowling Green. *Id.* 

45. Upon information and belief, the selection of the one-taxi-per-2,000-residents ratio was arbitrary.

46. Upon information and belief, the City possesses no evidence that the one-taxi-per-2,000-residents ratio advances any legitimate government interest.

47. Applying the one-taxi-per-2,000-residents ratio, Bowling Green by law currently has a hard cap of 16 total taxi permits.

48. In practice, though, Bowling Green does not allow 16 taxis to operate in the city. The City actually has far fewer taxis even than it allows by law.

49. Although there are 16 taxicab permits, the City holds seven of these permits itself and has allocated them to a city-owned transit service called B.G. Transit.

50. B.G. Transit is not a taxi service.

51. The City itself specifically advertises that B.G. Transit is not a taxi service: "Many people think B.G. Transit is a 'taxi,' *but it isn't*. It is a demand response public transit system that operates more like a bus whose service is determined by scheduled rides." *See* The City of Bowling Green, Ohio, B.G. Transit, *available at* http://www.bgohio.org/departments/municipal-administrator/grants-administration/public-transportation (emphasis in original).

52. B.G. Transit is partly funded by the City and an operating grant from the Ohio Department of Transportation. Nevertheless, the general public ages 4 to 64 must pay \$3.50 to ride on B.G. Transit.

53. B.G. Transit also has limited hours of operation. It does not operate on weekday nights after 8:00 p.m., on Saturdays after 4:00 p.m. or on Sundays or holidays.

54. Thus, even though the City's law authorizes 16 taxi permits, the City's actual enforcement of that law results in only nine available taxi permits.

55. Even if there were a non-arbitrary basis for the City's hard cap of 16 taxi permits, there is no rational basis for the City to withhold nearly half those permits.

56. The City could lawfully operate B.G. Transit without holding taxi permits under the existing ordinance.

57. The City has exclusively granted the remaining nine taxicab permits to only two companies: NE Transportation, LLC, d/b/a Supercab and Ralph Duchacek, d/b/a Reliable Taxi. Supercab holds seven permits and Reliable Taxi holds two.

58. Upon information and belief, neither Supercab nor Reliable Taxi uses their permits to operate a traditional taxi service—that is, neither Supercab nor Reliable Taxi offers on-demand point-to-point for-hire transportation.

59. Upon information and belief, Supercab offers a share-a-ride shuttle service utilizing large 12-passenger vans. Similarly, on information and belief, Reliable Taxi offers only a shuttle service in 11-passenger vans. Both businesses charge \$4 per head for rides within the Bowling Green city limits.

60. In short, the 16 taxi permits allowed under Bowling Green law are held by only three entities, and one of those entities is the City itself. There are no more available permits under Bowling Green's taxi cap. This means that any application for a new permit will be denied regardless of how safe a vehicle is, how well qualified the driver is or how much insurance an applicant has.

61. The City's refusal to issue additional taxicab permits has effectively resulted in a prohibition on taxi services in Bowling Green.

62. The City's limitation on the issuance of new taxicab permits precludes individuals and businesses like Green Cab from obtaining taxicab permits. Because of the cap, the City will deny all future applications for taxicab permits unless the population grows significantly.

63. According to the most recent census, Bowling Green's population is 31,802 people.

64. The City will therefore deny all future permit applications unless the population grows by 1,198 people, and in that case, would only issue one new permit.

65. The City's enactment and enforcement of § 114.15(A) is arbitrary, unreasonable and not rationally related to a legitimate government purpose.

66. The City has no evidence that limiting the number of available taxicab permits to one permit per 2,000 residents promotes or protects public health, safety or welfare.

67. The City does not have evidence to demonstrate that its objective in enacting § 114.15(A) bears a real and substantial relationship to public health, safety or welfare.

68. In limiting the number of available taxicab permits, the City arbitrarily protects its transit service and two established businesses from competition at the public's expense.

69. In enacting and enforcing § 114.15(A), the City irrationally treats similarly-situated businesses differently.

70. Other commercial vehicles in Bowling Green—delivery vans, ice-cream trucks and more—are allowed to operate without a hard cap on their numbers.

71. The City's enactment and enforcement of § 114.15(A) effectively creates two classes of businesses: Those who were able to obtain a taxi permit when they were first available, and everyone else. Only the first class is allowed to lawfully operate a taxi business in Bowling Green, and the only way to move from the second class into the first is to persuade someone in the first class to give up their spot. There is no rational basis for this arbitrary distinction.

72. Courts in other jurisdictions have held that hard caps on taxi permits, like the cap enforced by Bowling Green, violate their state constitutions.

73. On April 16, 2013, for example the Milwaukee County Circuit Court enjoined as unconstitutional the City of Milwaukee's hard cap on taxicab permits in *Ibrahim v. City of Milwaukee*, case number 11-CV-15178.

74. Bowling Green's taxicab permit, like Milwaukee's former taxicab permit, violates Green Cab's and other entrepreneurs' constitutional rights by placing a hard cap on the allowed number of taxicabs and creating a permanent class of established taxi services that are protected from new competition.

#### HARM TO PLAINTIFF

75. Green Cab has the financial resources and human capital to immediately begin operating a taxi business in Bowling Green.

76. Green Cab invested a significant amount of time and resources to apply for a taxicab permit in Bowling Green. In preparing its application, Green Cab obtained a certificate of insurance in the amount of \$500,000 in coverage, required and paid for several of its drivers to undergo physical examinations, identified property to lease in Bowling Green, developed marketing materials and paid a fee of \$40. This past investment establishes both Green Cab's willingness and its capacity to provide taxicab service in Bowling Green if it is allowed to do so in the future.

77. But for the City's taxicab permit cap, Green Cab would be able to qualify for a taxicab permit and immediately expand its business to Bowling Green.

78. The ongoing existence of § 114.15(A) continually denies Green Cab the opportunity to apply for a taxicab permit and offer its taxi service in Bowling Green. Green Cab has suffered and continues to suffer financial harm as a result of its inability to offer a taxi service in Bowling Green.

79. In enacting and enforcing § 114.15(A), the City deprives Green Cab of the opportunity to expand its business, causing the company to suffer great and irreparable harm.

# HARM TO BOWLING GREEN RESIDENTS

80. As a thriving college town, many of Bowling Green's residents are in need of safe, reliable and affordable transportation options, especially on nights and weekends. Because of the City's limitation on the issuance of taxicab permits, these options are not available.

81. The ratio of 1 cab per 2,000 residents in Bowling Green is far higher than the ratio in most American cities, including most cities within Ohio.

82. This taxicab permit cap arbitrarily deprives the public of affordable taxi services.

83. This cap also arbitrarily deprives individuals and businesses like Green Cab of the economic opportunity to operate taxicabs in Bowling Green.

# FIRST CLAIM FOR RELIEF: VIOLATION OF ARTICLE I, SECTIONS 1, 16 AND 19 OF THE OHIO CONSTITUTION—SUBSTANTIVE DUE PROCESS

84. Green Cab incorporates herein by reference the allegations made in  $\P$  1 through 83.

85. The City of Bowling Green, through § 114.15(A) of the Bowling Green, Ohio Code of Ordinances, arbitrarily and irrationally allows only 16 taxicab permits to be issued in the city and thus prevents Green Cab from applying for new permits.

86. The protectionist, arbitrary and irrational cap on the number of permits protects existing permit holders from competition by denying Green Cab the opportunity to expand its taxi business to Bowling Green.

87. Article I, Sections 1, 16 and 19 of the Ohio Constitution, through their guarantee of substantive due process, protect Green Cab's right to operate its business free from arbitrary or irrational regulations. This guarantee is partly assured by Article I, Section I, which states "All men are, by nature, free and independent, and have certain inalienable rights, among with are those of

enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

88. The cap violates Article I, Sections 1, 16 and 19 because it denies Green Cab its right to operate its business free from arbitrary and unreasonable regulation and does not further a legitimate governmental interest.

89. Protectionism is not a legitimate basis for prohibiting Green Cab from operating its taxi business.

90. Unless the City of Bowling Green is permanently enjoined from committing the above-described violations of the Ohio Constitution, Green Cab will continue to suffer great and irreparable harm.

# SECOND CLAIM FOR RELIEF: VIOLATION OF ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION—EQUAL PROTECTION

91. Green Cab incorporates herein by reference the allegations made in ¶¶ 1 through 90.

92. Section § 114.15(A) treats similarly situated businesses differently.

93. Section § 114.15(A) creates a protectionist, arbitrary and irrational distinction between those who are permitted to operate taxicabs and those who are not.

94. As a direct result of this distinction between businesses that can lawfully operate a taxicab and businesses that cannot, Green Cab is prevented from expanding its taxi service to Bowling Green. There is no reasonable basis for this arbitrary distinction.

95. The classification of those who hold taxicab permits and those who do not does not advance a legitimate government interest.

96. Prohibiting Green Cab from operating a taxi service in Bowling Green is arbitrary and irrational, violating the guarantee of equal protection found in Article I, Section 2 of the Ohio Constitution.

97. Unless the City of Bowling Green is permanently enjoined from committing the above-described violation of the Ohio Constitution, Green Cab will continue to suffer great and irreparable harm.

### **RELIEF SOUGHT**

WHEREFORE, Green Cab requests that this Court:

A. Enter a declaratory judgment that the City of Bowling Green has violated Article I,

Sections 1, 2, 16 and 19 of the Ohio Constitution through arbitrarily denying Green Cab the opportunity to obtain taxicab permits;

B. Enter an order permanently enjoining the City of Bowling Green from denying an

application for a taxicab permit because of the number of taxicab permits that already exist;

C. Award Green Cab nominal damages in the amount of one dollar;

D. Award Green Cab its reasonable costs and attorneys' fees;

E. Award Green Cab any other relief as is appropriate under the circumstances.

Dated this \_\_\_\_ day of June, 2015.

Robert McNamara\* (VA Bar No. 73208) INSTITUTE FOR JUSTICE 901 North Glebe Road, Suite 900 Arlington, Virginia 22203 (703) 682-9320 Email: rmcnamara@ij.org

\*Application for Admission *Pro Hac Vice* to be filed Meagan Forbes\* (MN Bar No. 0393427) INSTITUTE FOR JUSTICE 520 Nicollet Mall, Suite 550 Minneapolis, Minnesota 55402-1046 (612) 435-3451Email:mforbes@ij.org

Andrew R. Mayle (OH Bar No. 75622) MAYLE RAY & MAYLE 210 South Front Street Fremont, Ohio 43420 (419) 334-8377 Email: <u>amayle@maylerraymayle.com</u>

Attorneys for Plaintiff