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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | DATE FILED: March 9, 2021 9:38 AM<br>FILING ID: 3AC1D80EF4EAE<br>CASE NUMBER: 2021CV30803 |
| **Plaintiffs:** ABDALLAH BATAYNEH and STRAWBERRY PARK HOT SPRINGS SHUTTLE, LLC, a Colorado Limited Liability Company,<br><br>v.<br><br>**Defendants**: DOUG DEAN, in his official capacity as the Director of the Colorado Public Utilities Commission; ERIC BLANK, in his official capacity as the Chairman of the Colorado Public Utilities Commission; JOHN C. GAVAN, in his official capacity as a Commissioner of the Colorado Public Utilities Commission; MEGAN GILMAN, in her official capacity as a Commissioner of the Colorado Public Utilities Commission; and the COLORADO PUBLIC UTILITIES COMMISSION. | ▲ **COURT USE ONLY** ▲ |
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* *Pro hac vice applications to be filed*

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Abdallah Batayneh and Strawberry Park Hot Springs Shuttle, LLC, by and through undersigned counsel, hereby sue the Defendants and in support state and allege as follows:

## INTRODUCTION

1. This constitutional challenge seeks declaratory and injunctive relief to vindicate Plaintiffs' rights under the Due Process Clause of the Colorado Constitution. Plaintiffs seek to operate a safe and reliable shuttle business, and Defendants have found them "operationally, managerially, and financially fit" to do so. However, because Plaintiffs did not prove that "public convenience and necessity" "required" more competition, Plaintiffs' application was denied.

2. Plaintiffs did not seek review of Defendants' determination, and Plaintiffs agree that Defendants followed the relevant Colorado statutes and regulations. Plaintiffs do not seek that review now. Instead, Plaintiffs are seeking prospective relief that the "public convenience and necessity" requirement violates the Due Process Clause of the Colorado Constitution. If Plaintiffs prevail, they will reapply for the authorization to open and operate a shuttle service, which they will likely receive considering that Defendants have already expressly found that Plaintiffs meet all the other requirements.

3. Plaintiffs are not challenging the entirety of the transportation, carrier, or shuttle regulatory system. Nor are they challenging any regulations related to fitness, health, or safety. Plaintiffs are asserting a narrow challenge only to the unconstitutional economic barrier to competition created by the "public convenience and necessity" requirement found in two specific subsections: Colorado Revised Statutes §§ 40-10.1-201(1) and 40-10.1-203(1) (collectively the "Monopoly Rule").

## JURISDICTION AND VENUE

4. This action arises under Article II, § 25 (Due Process of Law) of the Colorado Constitution.

5. This Court has jurisdiction over Plaintiffs' claims under the Uniform Declaratory Judgments Law, Colorado Revised Statutes §§ 13-51-101 to 13-51-115.

6. Venue for this constitutional challenge lies in this Court under the Colorado Rules of Civil Procedure 98(b)(2).

7. The Attorney General is being served in addition to the parties under Colorado Revised Statutes § 13-51-115.

## PARTIES

8. Plaintiff Abdallah Batayneh is a citizen and a resident of Routt County, Colorado. He is over 18 years of age and is within the jurisdiction of this Court.

9. Plaintiff Strawberry Park Hot Springs Shuttle, LLC, is a Colorado limited liability company in good standing. Its principal offices are in Routt County, and but for the regulatory barrier challenged in this lawsuit, would be operating a call-and-demand shuttle service. Plaintiff Batayneh is the principal officer of Plaintiff Strawberry Park Hot Springs Shuttle, LLC.

10. Defendant Doug Dean is sued in his official capacity as the Director of the Colorado Public Utilities Commission.

11. Defendant Eric Blank is sued in his official capacity as the Chairman of the Colorado Public Utilities Commission.

12. Defendant John C. Gavan is sued in his official capacity as a Commissioner of the Colorado Public Utilities Commission.

13. Defendant Megan Gilman is sued in her official capacity as a Commissioner of the Colorado Public Utilities Commission.

14. Defendant Colorado Public Utilities Commission ("PUC") is an agency of the State of Colorado vested by the Legislature with the authority to regulate transportation providers. Its headquarters are located in Denver.

## STATEMENT OF FACTS

### *Plaintiffs Abdallah Batayneh and Strawberry Park Hot Springs Shuttle, LLC*

15. Plaintiff Batayneh is operationally, managerially, and financially fit to operate a shuttle service in Colorado, and but for the economic barrier to competition (the "Monopoly Rule") found in Colorado Revised Statutes §§ 40-10.1-201(1) and 40-10.1-203(1), he would already be providing that service.

16. Plaintiff Batayneh is a hard-working immigrant from Jordan who came to this country to forge a better life for himself and his family.

17. Plaintiff Batayneh has been working at a resort in Steamboat Springs, Colorado ("the resort") for approximately two years.

18. During the time Plaintiff Batayneh has worked in Steamboat Springs, he has grown to love its natural beauty.

19. Plaintiff Batayneh is passionate about helping people to experience the beauty of the region.

20. Plaintiff Batayneh believes that the best way for many people to explore the mountainous roads is by taking a shuttle.

21. There are existing shuttle companies that service the area.

22. Plaintiff Batayneh believes that the existing shuttle companies leave much to be desired.

23. Many resort guests have told Plaintiff Batayneh that they have difficulty arranging for shuttle rides to the resort.

24. Many resort guests have told Plaintiff Batayneh that they find the existing shuttle companies' prices too expensive.

25. Plaintiff Batayneh decided to start his own shuttle company to provide better and cheaper service than the existing ones.

26. Plaintiff Batayneh formed Plaintiff Strawberry Park Hot Springs Shuttle, LLC, for the purpose of operating Plaintiffs' shuttle company.

27. Plaintiff Batayneh has the experience necessary to safely operate his proposed shuttle service.

28. Plaintiff Batayneh has managerial experience.

29. Plaintiff Batayneh operates his own cleaning business while also working at the resort.

30. Plaintiffs arranged to purchase a well-suited vehicle to use in connection with their proposed shuttle service.

31. Plaintiffs applied for the necessary authorizations from Defendants to operate their proposed shuttle service.

32. Defendants found that Plaintiffs are operationally fit to operate their proposed shuttle service.

33. Defendants found that Plaintiffs are managerially fit to operate their proposed shuttle service.

34. Defendants found that Plaintiffs are financially fit to operate their proposed shuttle service.

35. Nonetheless, Defendants rejected Plaintiffs' application.

36. Defendants rejected Plaintiffs' application solely because of the Monopoly Rule.

37. As a result, Plaintiffs are legally barred from operating their shuttle business.

***The Monopoly Rule Lets Existing Private Companies Veto Their Would-Be Competitors***

38. For a business to be lawfully allowed to provide shuttle service to the vast majority of potential customers, the business must obtain the status of a common carrier.

39. Defendants are responsible for regulating transportation providers and authorizing common carriers.

40. In order to obtain the status of a common carrier, the applicant must overcome the Monopoly Rule.

41. The Monopoly Rule is the combined effect of two subsections of the Colorado Revised Statutes: §§ 40-10.1-201(1)[1] and 40-10.1-203(1).[2]

[1] "A person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present public convenience and necessity requires or will require such operation." Colo. Rev. Stat. § 40-10.1-201(1).

[2] "The commission has the power to issue a certificate to a common carrier or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in the commission's judgment, the public convenience and necessity may require." Colo. Rev. Stat. § 40-10.1-203(1).

42. Under the Monopoly Rule, it is not sufficient for a shuttle applicant to be fit to perform the service. Instead, an applicant must prove that "public convenience and necessity" "requires" their proposed business. *Id*.

43. Once an existing company has been granted the authority to provide shuttle service, they never again need to show that their continued service is "required" by "public convenience and necessity."

44. After an applicant is found fit, the Monopoly Rule requires applicants to show that the service provided by the existing private companies against whom the applicant wishes to compete is "substantially inadequate."

45. Even if there is unmet demand, applicants will still fail to overcome the Monopoly Rule if any of the existing shuttle companies are providing "adequate" service.

46. Even if the rates are too high for many potential customers to use existing shuttle providers, applicants will still fail to overcome the Monopoly Rule if any of the existing shuttle companies are providing "adequate" service.

47. Even if shuttle applicants could lower the cost for many potential customers, applicants will still fail to overcome the Monopoly Rule if any of the existing shuttle companies are providing "adequate" service.

48. Even if shuttle applicants could reduce unreasonable wait times for many potential customers, applicants will still fail to overcome the Monopoly Rule if any of the existing shuttle companies are providing "adequate" service.

49. Even if shuttle applications could improve access to transportation in a region, applicants will still fail to overcome the Monopoly Rule if any of the existing shuttle companies are providing "adequate" service.

50. In practice, the Monopoly Rule affords the existing private companies a *de facto* veto over their would-be competitors.

51. When an applicant applies with Defendants for the authorization necessary to open a shuttle company, Defendants allow the existing shuttle companies to intervene in, and oppose, their would-be competitor's application.

52. When the existing companies oppose an application, Defendants deny it.

53. When the existing companies choose not to oppose an application, Defendants grant it.

54. Since January 2016, Defendants have ruled on more than 125 applications seeking authority to open a new common carrier business.

55. Upon information and belief, since January 2016, Defendants have granted all unopposed applications without a hearing other than the few that were incorrectly filed.

56. When existing companies oppose applications, Defendants allow them to intervene and demand that applicants amend their application so as not to compete with the existing companies.

57. Upon information and belief, over the past five years, Defendants granted all applications that acquiesced to the objecting companies' demands.

58. Existing companies need not even issue a demand. If existing companies oppose a new application, Defendants do not grant it.

59. In more than 125 applications over the past five years, upon information and belief, Defendants have granted one opposed application by a new applicant, in February 2017, which sought to open a new common carrier business under the Monopoly Rule.

60. The exception proves the rule. Over the past five years, Defendants only granted one opposed application by a new applicant seeking to open a new common carrier company under the Monopoly Rule. That application involved a business that had operated for nearly a decade by subcontracting from a company that the PUC shut down for unrelated reasons. That applicant had more than 25,000 customers per year, and was only opposed by a single company with three vehicles. That's what it takes to overcome the Monopoly Rule.

61. Upon information and belief, Defendants have not granted a single opposed application to start a new common carrier company by a new applicant under the Monopoly Rule after February 2017.

62. Upon information and belief, many Coloradoans choose not to apply to start a competing company because the Monopoly Rule renders their application futile.

63. Upon information and belief, several Coloradoans have withdrawn their applications to open a new carrier company when existing companies object because the Monopoly Rule rendered their application futile.

64. The Monopoly Rule renders opposed applications futile.

65. Defendants' application of the Monopoly Rule effectively affords the existing shuttle companies the ability to determine whether new companies are allowed to compete with them.

66. The Monopoly Rule protects private companies from competition.

67. The Monopoly Rule protects private companies from competition from otherwise-qualified companies.

68. The Monopoly Rule protects the existing shuttle companies from competition.

69. The Monopoly Rule harms the public.

70. There is an alternative to the Monopoly Rule under Colorado Revised Statutes § 40-10.1-203(2)(b)(I) (the "Competition Rule").

71. The Competition Rule governs applications to operate taxicab service in counties with a population greater than seventy thousand. Colo. Rev. Stat. § 40-10.1-203(2)(b)(I).

72. Under the Competition Rule, applicants must still prove they are fit to provide the proposed service, but need not prove that their would-be competitors are "substantially inadequate."

73. The Competition Rule eliminates the existing companies' veto over their would-be competition, while leaving in place all fitness requirements.

74. Plaintiffs are not challenging any fitness requirements.

75. Plaintiffs are not challenging any health or safety requirements.

76. Plaintiffs are only challenging the Monopoly Rule.

***Plaintiffs' Application Was Denied Because of the Monopoly Rule***

77. On or about November 21, 2019, Plaintiffs filed an application with Defendants to provide call-and-demand shuttle service between all points in Routt County, Colorado, with a restriction only to provide transportation services to and from the resort.

78. Defendants consider Plaintiffs' proposed call-and-demand shuttle service to be a common carrier.

79. Defendants issued the notice of Plaintiffs' application on or about November 25, 2019.

80. Defendants' notice informed the existing shuttle companies that Plaintiffs sought to open a competing shuttle business.

81. The existing shuttle companies objected to Plaintiffs' application.

82. The existing shuttle companies intervened in Plaintiffs' application.

83. The existing shuttles did not issue a demand or offer to withdraw their objection if Plaintiffs amended their application.

84. The existing shuttle companies simply objected to new competition.

85. Plaintiff Batayneh came to this country believing in the American Dream that people can work hard, start a business, and build something for themselves and their family.

86. Plaintiff Batayneh does not believe existing companies should be allowed to keep him from competing with them.

87. Plaintiff Batayneh does not believe that existing companies should be allowed to petition the government to deny him the right to operate a lawful business.

88. Therefore, Plaintiffs refused to withdraw their application.

89. On September 10, 2020, Defendants held a hearing on Plaintiffs' application.

90. The hearing included testimony from Plaintiffs and witnesses that Plaintiffs called on their behalf.

91. The hearing also included testimony from the owner of an existing shuttle company opposing Plaintiffs' application.

92. Defendants issued their written decision (the "Decision") on or about October 9, 2020.

93. A true and correct copy of the Decision is attached hereto as Exhibit "A."

94. In their Decision, Defendants found that Plaintiff Batayneh is operationally fit to operate the proposed service.

95. In their Decision, Defendants found that Plaintiff Batayneh is managerially fit to operate the proposed service.

96. In their Decision, Defendants found that Plaintiff Batayneh is financially fit to operate the proposed service.

97. Plaintiff Batayneh is operationally, managerially, and financially fit to operate the proposed service.

98. In their Decision, Defendants found that Plaintiff Batayneh has proven himself capable of managing a business.

99. In their Decision, Defendants found that Plaintiff Batayneh has shown that he understands the resort's business and how it partners with shuttles.

100. In their Decision, Defendants found that Plaintiff Batayneh has many years of experience driving in snowy conditions.

101. In their Decision, Defendants found that Plaintiff Batayneh has many years of experience driving to and from the resort in bad weather conditions.

102. In their Decision, Defendants found that Plaintiff Batayneh has proven that he is committed to complying with Defendants' regulations.

103. In their Decision, Defendants found that Plaintiff Batayneh has been approved to purchase a van capable of handling the most challenging winter road conditions.

104. As a result, Defendants concluded in their Decision that the "evidence establishes that Mr. Batayneh has sufficient equipment, personnel, facilities, and financial resources to operate the proposed service, and that he is managerially fit to operate." Ex. A. at 22.

105. That should have been the end of the analysis.

106. That was not the end of the analysis.

107. Instead, Defendants denied Plaintiffs' application solely because of the Monopoly Rule.

108. Plaintiffs cannot overcome the Monopoly Rule.

109. Plaintiffs applied on or about November 21, 2019, and were denied on October 9, 2020—nearly one year later.

110. Upon information and belief, over the past five years, Defendants typically grant unopposed applications within approximately two months.

111. Plaintiffs' application took far longer because of the Monopoly Rule.

112. Plaintiffs' application was more difficult because of the Monopoly Rule.

113. Plaintiffs' application was more expensive because of the Monopoly Rule.

114. As a result of Defendants' denial of Plaintiffs' application, Plaintiffs are legally barred from operating their shuttle business.

115. If the Monopoly Rule did not exist, Plaintiffs' application would have been granted.

***The Monopoly Rule is Unrelated to any Legitimate Governmental Interest***

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

117. Colorado's statutes, rules, and regulations include numerous health and safety provisions.

118. If the Monopoly Rule did not exist, all of those health and safety provisions would still continue to exist.

119. Colorado's statutes, rules, and regulations include numerous requirements for transportation providers.

120. Other than the Monopoly Rule, Plaintiffs are not challenging any of the requirements for transportation providers found in Colorado's statutes, rules, and regulations.

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

122. Defendants possess no evidence that the Monopoly Rule promotes or protects public health, safety, or welfare.

123. The Monopoly Rule is irrational.

124. The Monopoly Rule is unreasonable.

125. The Monopoly Rule arbitrarily picks which private companies to protect from otherwise-qualified companies.

126. The Monopoly Rule bars qualified Coloradoans from engaging in lawful business.

127. The Monopoly Rule is not a reasonable regulation.

128. The Monopoly Rule unconstitutionally delegates to private parties the power to determine who the government allows to engage in a lawful business.

129. The Monopoly Rule is a pure economic protection for some members of an industry against competition.

130. Economic protectionism in favor of existing private companies is not a legitimate governmental interest.

131. The Monopoly Rule is not related to any legitimate government interest.

132. The Monopoly Rule causes harm to the public.

***The Monopoly Rule Continues to Harm Plaintiffs***

133. But for the Monopoly Rule, Plaintiffs would currently be operating their shuttle business.

134. If the Monopoly Rule were invalidated, Plaintiffs would immediately reapply for authorization to enter the market.

135. Defendants have already found that Plaintiffs are operationally, managerially, and financially fit to operate their proposed shuttle business.

136. Defendants have already found that, but for the Monopoly Rule, Plaintiffs would be allowed to enter the market.

137. If the Monopoly Rule were invalidated, and Plaintiffs subsequently reapplied, Plaintiffs' application would be granted.

138. The relevant facts have not changed since Defendants' Decision.

139. Defendants followed Colorado law when it applied the Monopoly Rule in its Decision.

140. Plaintiffs are not challenging Defendants' Decision and are not seeking to overturn it.

141. Plaintiffs do not contend that Defendants made the wrong decision under the Monopoly Rule as it stood. Instead, Plaintiffs seek a declaration that the Monopoly Rule is unconstitutional.

142. Plaintiff Batayneh is still operationally, managerially, and financially fit to enter the market in the absence of the Monopoly Rule.

143. Defendants continue to enforce the Monopoly Rule.

144. If Plaintiffs were to reapply, the Monopoly Rule would still allow existing companies to veto Plaintiffs' entry into the market.

145. It would therefore be futile for Plaintiffs to reapply while the Monopoly Rule continues to be enforced.

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

147. The Monopoly Rule violates Plaintiffs' constitutional rights.

148. The Monopoly Rule is facially unconstitutional.

149. The Monopoly Rule is unconstitutional as applied to Plaintiffs.

## COUNT I: VIOLATION OF THE COLORADO CONSTITUTION'S GUARANTEE OF DUE PROCESS OF LAW

150. Plaintiffs reassert and reallege paragraphs 1 through 149 as if fully stated herein.

151. Article II, § 25 of the Colorado Constitution guarantees due process of law to Plaintiffs.

152. The rights protected by Article II, § 25 of the Colorado Constitution include the rights to life, liberty, and property.

153. The rights protected by Article II, § 25 of the Colorado Constitution include the right to engage in lawful business.

154. Article II, § 25 of the Colorado Constitution recognizes the American constitutional concept of fundamental freedoms and liberties, under which the individual has the right to engage in a lawful business.

155. The Monopoly Rule facially violates the Colorado Constitution's guarantee of due process of law.

156. The Monopoly Rule violates the Colorado Constitution's guarantee of due process of law as applied to Plaintiffs.

157. The Monopoly Rule creates a monopoly or cartel.

158. The Monopoly Rule bars qualified Coloradoans from entering a lawful market to protect existing businesses from competition.

159. The Monopoly Rule is pure economic protectionism.

160. The Monopoly Rule protects the existing private shuttle companies from new competition.

161. The Monopoly Rule allows the existing private shuttle companies to control who the government allows to compete with them.

162. Protectionism is not a constitutionally legitimate basis for prohibiting Plaintiffs from operating a shuttle business in Colorado.

163. The Monopoly Rule denies Plaintiffs due process of law by delegating the power to determine whether or not Defendants grant an application to the existing private shuttle companies.

164. As the Monopoly Rule appears to violate Article II, § 25 of the Colorado Constitution, Plaintiffs seek declaratory relief regarding the validity of the Monopoly Rule and the status of Plaintiffs' rights under Article II, § 25 of the Colorado Constitution.

165. As the Monopoly Rule affects Plaintiffs' right to engage in lawful business under Article II, § 25 of the Colorado Constitution, Plaintiffs are entitled to declaratory relief regarding the validity of the Monopoly Rule and the status of Plaintiffs' rights.

166. Defendants' violations of the Colorado Constitution's guarantee of due process of law have caused irreparable harm to Plaintiffs.

167. Defendants' violations of the Colorado Constitution's guarantee of due process of law will continue to cause daily irreparable harm to Plaintiffs until such time as the Monopoly Rule is no longer enforced.

168. Unless Defendants are permanently enjoined from committing the above-described violations of the Colorado Constitution, Plaintiffs will continue to suffer ongoing irreparable harm.

169. It is therefore in the public interest for permanent injunctive relief to be granted.

170. The Monopoly Rule violates Plaintiffs' guarantee of due process of law under Article II, § 25 of the Colorado Constitution, and there is no adequate remedy at law.

## RELIEF SOUGHT

WHEREFORE, Plaintiffs' Abdallah Batayneh and Strawberry Park Hot Springs Shuttle, LLC, respectfully request that this Court:

A. Enter a declaratory judgment that the Monopoly Rule facially violates the Colorado Constitution's guarantee of due process of law (Colo. Const. art II, § 25);

B. Enter a declaratory judgment that the Monopoly Rule violates the Colorado Constitution's guarantee of due process of law as applied to Plaintiffs (Colo. Const. art II, § 25);

C. Enter an order permanently enjoining Defendants from enforcing the Monopoly Rule in any manner;

D. Enter an order permanently enjoining Defendants from enforcing the Monopoly Rule as applied to Plaintiffs;

E. Award Plaintiffs their reasonable costs; and

F. Award Plaintiffs any other relief as is appropriate under the circumstances.

Dated: March 9, 2021

Respectfully submitted,

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