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## Commerce Clause: Discount for Residents by Bridge Authority Does Not Violate Commerce Clause or Nonresidents' Right to Interstate Travel

## *James v. Triborough Bridge and Tunnel Authority*, No. 13-4377-cv (2d Cir. Dec. 24, 2014).

Where New York provides a moderate discount on bridge tolls for borough residents served by specific bridges, the higher fee charged to nonresidents is not unconstitutional.

The Triborough Bridge and Tunnel Authority provides discounted toll prices to residents of Staten Island, the Rockaway Peninsula, and Broad Channel Island when crossing specific bridges. These bridge crossings are the exclusive means of egress and access for the residential areas listed above.

Residents of New Jersey and New York, led by plaintiff Riva James, challenged the Triborough Bridge and Tunnel Authority's discount program, alleging it violated the constitutional right to travel and the dormant Commerce Clause. The district court granted the defendant's motion to dismiss. The plaintiffs appealed.

**HELD**: The Second Circuit affirmed the lower court, holding the discounted rate provided to some residents for some bridges violated neither the right to travel nor the dormant Commerce Clause.

**DISCUSSION**: In describing the right to travel, the Supreme Court has said it "protects the right of a citizen of one State to enter and to leave another State, the right to be

treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." *Saenz v. Roe*, 526 U.S. 489 (1999). As for the dormant Commerce Clause, the Court has said it "significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce. It is driven by a concern about economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *McBurney v. Young*, 133 S. Ct. 1709, 1719 (2013).

In the case at hand, plaintiffs complained that the toll discounts set up an "invidious distinction" between residents and non-residents that violates the right to travel. To analyze the challenge the court looked to what it called an "unusually apposite circuit precedent," *Selevan v. New York Thruway Authority*, 584 F.3d 82 (2d Cir. 2009), for the proposition that where a toll differential amounts to "a minor restriction on travel," there is no "invidious distinction" requiring strict scrutiny analysis. Instead, courts will apply three-part test from *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355 (1994). Under that test, the Supreme Court asked whether the fee "(1) is based on some fair approximation of use of the facilities, (2) is not excessive in relation to the benefits conferred, and (3) does not discriminate against interstate commerce." The Second Circuit noted that plaintiffs failed to show that the discounts at issue are materially different from those it addressed in *Selevan* - in fact, in percentage terms the discount at issue was even smaller than that in the previous case, and the residents involved were similarly geographically isolated. Moreover, as in *Selevan*, the money collected from the tolls is used to defray the costs of the bridges and to support mass transit systems, enhancing interstate travel. Furthermore, plaintiffs could not point to a single instance of a person foregoing interstate travel across the bridges due to the toll discrepancy. As a result, *Northwest Airlines* was the proper test; the resident discount at issue passed such a test given it is not excessive, is based on an approximation of use, and does not discriminate against interstate commerce.

As for the dormant Commerce Clause challenge, the court noted that although overtly protectionist measures by a state are invalid, "the Commerce Clause does not invalidate all State restrictions on commerce." Again, *Northwest Airlines* was the proper test – not strict scrutiny – since the discount amounted to only a minor restriction on travel.

http://www.ca2.uscourts.gov/decisions/isysquery/1be298ff-595a-4729-bf85-2808ac2271fc/1/doc/13-4377_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/1be298ff-595a-4729-bf85-2808ac2271fc/1/hilite/ (last accessed Jan. 28, 2015).