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ADA: Complaint Must Show Denial of Job Due to Disability; Delay in Application Due to Healthcare Screening Does Not Support ADA Action

Roberts v. City of Chicago, No. 15-1963 (7th Cir. Mar. 31, 2016)

The Seventh Circuit has upheld a lower court determination denying ADA relief to two firefighter applicants who alleged that, because of additional healthcare screening required of them they missed critical deadlines and were not hired. The Circuit Court found they did not allege that their loss of employment was due to disability as required under the ADA.

In 1995 Sean Roberts and Steven Hill joined a class action by 6,000 similarly-situated African Americans claiming Chicago (City) denied them employment based on a pre-employment examination that had an adverse impact on African American fire department applicants. The decision in that case found that the pre-employment examination had been discriminatory and ordered that compensation be provided to the class members. It also ordered that 111 firefighter jobs be made available to members of the class.

In 2001, after the City applied the ruling in the case, which mandated a first-come, first-serve hiring process in the fire department, Roberts and Hill received letters saying they were among the 111 applicants that were being considered for employment. The two then received an offer conditioned on their undergoing a medical screening. Each man failed the initial medical screening but then provided further medical documentation requested by the City, but the City never hired either man.

The two filed suit in 2014 under the Americans with Disabilities Act (ADA), alleging Hill was discriminated against because of his asthma, hernia, and kidney stones and that Roberts was discriminated against based on his bronchitis. The district court rejected the plaintiffs' complaint, holding it failed to state a plausible claim for relief because it failed to adequately allege they were not hired because of their actual or perceived disabilities.

The Seventh Circuit affirmed the lower court, holding that plaintiffs did not allege facts sufficient to show either was not hired *because* of his disability. The Court found the plaintiffs showed that their medical conditions extended their medical screening process and that under the hiring process mandated by the successful class action suit (a first-come, first-serve system) this delay disadvantaged them in the hiring process. But the Court held that that was *not* the same thing as showing the City did not hire them *because* of their disabilities. The Court also rejected the plaintiff's argument that the medical requests from the City violated the ADA in and of themselves, because it determined the ADA permits employment to be conditioned on the results of a medical exam, as long as all employees are subjected to the same exams regardless of disability. Finally, the Court found that plaintiffs had failed to state a disparate impact claim because they had not argued that the City discriminated against disabled applicants generally; their complaint was limited to the plaintiffs personally.

LINK

ADA: Terminated Police Officer Who Cannot Exercise Sound Judgment or Use Deadly Force in Emergencies is Not "Qualified Individual"

Jordan v. City of Union City, No. 15-12038 (11th Cir. Mar. 23, 2016)

A police officer who suffered from panic attacks and anxiety disorder could not perform essential job functions and was therefore not a "qualified individual" under the ADA, according to the Eleventh Circuit.

After graduating from the police academy, Jason Jordan became an officer with the Union City, Georgia Police Department, on a probationary basis. Jordan suffers from generalized anxiety disorder, cyclothymic disorder (a mood disorder), and panic disorder. During his probationary period he experienced heightened anxiety numerous times, even causing another officer to believe he needed medical attention on one occasion. He was ultimately terminated.

He filed suit, alleging he was unlawfully fired under the Americans with Disabilities Act (ADA). The district court held for the city finding Jordan failed to show he could perform the essential job functions of a police officer and therefore was not a "qualified

individual" under the ADA. On appeal, the Eleventh Circuit held the essential job functions of the police officer position were set forth in the job description and included the ability to exercise sound, independent judgment in emergency or stressful situations and to react quickly and calmly in emergencies, and being mentally and physically capable of using deadly force, if justified, when exposed to dangerous and life-threatening situations. The Circuit Court affirmed the lower court finding that Jordan's condition impacted his ability to manage stress, his breathing, blood pressure, heart rate, and adrenal fatigue. Moreover, it found his own testimony was that his anxiety episodes were unpredictable, unpreventable, and uncontrollable, even requiring medical treatment on more than one occasion. The Court found no material dispute about Jordan's inability to react calmly, quickly, and appropriately in high-stress, potentially life-threatening situations while having such an episode. Therefore he was not a qualified individual for purposes of the ADA.
LINK

Apportionment: States and Local Governments May Continue to Redistrict Based on Total Population

Evenwel v. Abbott, No. 14-940 (U.S. Apr. 4, 2016)

The Supreme Court has unanimously confirmed states' rights to use total population--not voting population--in apportioning among legislative districts.

A group of Texas voters challenged Texas' population-based legislative apportionment, arguing that it discriminated against voter-rich jurisdictions. The maximum total-population deviation between Texas Senate districts was about 8 percent, whereas the maximum eligible-voters deviation between districts exceeded 40 percent. The Court disagreed, concluding in a unanimous opinion that Texas' population-based redistricting was "based on constitutional history, this Court's decisions, and longstanding practice." In its seminal 1964 holding in *Reynold v. Sims*, the Court had established the principle of "one-person, one-vote" requiring state legislative districts to be apportioned equally. In no previous cases alleging a state or local government failed to comply with "one-person, one-vote" had the Court determined that a deviation was permissible based on eligible- or registered-voter data.

Section 2 of the 14th Amendment explicitly requires that the U.S House of Representatives be apportioned based on total population. "It cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis."

LINK

Eighth Amendment: Deprivation of Outdoor Exercise for 35 Weeks Constitutes Cruel and Unusual Punishment

Tarabochia v. Clatsop County, No. 13-35033 (9th Cir. Mar. 11, 2016)

An Oregon County prisoner's deprivation of outdoor exercise for 35 weeks was grounds for an Eighth Amendment action, according to the Ninth Circuit; the County's argument that it was too short-staffed to manage outdoor access did not excuse the deprivation.

In 2009 Loren Christopher Tarabochia was detained and incarcerated in Clatsop County, Oregon (County). He filed a variety of § 1983 claims as a result of his time in the County jail, including a claim that he was deprived of outdoor exercise, constituting cruel and unusual punishment. The district court, following a magistrate's recommendation, granted summary judgment to the County and individual defendants.

The Ninth Circuit vacated and remanded, finding a variety of errors. First, Circuit precedent finds a difference between temporary deprivation of outdoor exercise (six weeks or less) and long-term deprivation (longer than six weeks); only short term deprivation requires that plaintiff show adverse medical effects. Tarabochia's deprivation was thirty-five weeks; therefore, the lower court erred in accepting the magistrate's finding that Tarabochia failed to show adverse medical effects. Also in contrast to the lower court, the Circuit Court found the facts were disputed: although the County argued that the plaintiff had not only been allowed outside but had been given access to "day rooms" in the jail where he could walk around, Tarabochia denied that he was permitted outdoor access every day and that due to overcrowding, inmates were sleeping in day rooms, leaving little room for walking around.

Finally, as to the subjective element of an Eighth Amendment claim, the Court held the County had knowledge, given Circuit precedent and Tarabochia's grievances, that it was unlawful to deny inmates regular outdoor recreation, irrespective of a shortage of jail personnel. The Ninth Circuit vacated, holding a rational fact-finder could determine that the County and individually-named defendants acted with deliberate indifference to Tarabochia's rights.

LINK

Excessive Force: Repeated Use of Taser on Stationary, Non-violent Subject Did Not Violate Clearly Established Right; However, Such Right is Now Deemed to be Clearly Established in Fourth Circuit

Armstrong v. Village of Pinehurst, No. 15-1191 (4th Cir. Jan. 11, 2016)

The Fourth Circuit has upheld a district court finding that, where a mentally ill man subject to an involuntary commitment order was not actively resisting officers but was repeatedly tased and died shortly thereafter, the officers had used unreasonably excessive force in violation of Fourth Amendment. However, the court found that the defendants were entitled to qualified immunity because the decedent's right not to be tased while offering stationary and non-violent resistance to lawful seizure was not clearly established.

Notwithstanding the decision in the case, the Circuit gave definitive guidance that henceforth, officers are deemed to know of an arrestee's or detainee's constitutional right not to be tased when offering non-violent and stationary resistance.

Ronald Armstrong, who suffered from bipolar disorder, was found by Pinehurst, North Carolina police officers wandering near a major thoroughfare. An involuntary commitment order had just been issued for Armstrong by physicians who were concerned that he might be a danger to himself. Five officers tried to move Armstrong, who had sat straddling a sign pole and wrapped his arms and legs around it, but could not budge him. They warned Armstrong that they would tase him, and 30 seconds later, beginning administering a series of five taser bursts over a two-minute period. They subsequently pried him off the pole, handcuffed him and left him face-down in the grass. He died within minutes.

His estate sued under §1983, alleging Fourth- and Fourteenth Amendment violations. The lower court found for defendants on qualified immunity grounds.

The Fourth Circuit affirmed, holding that, while the use of a taser on a non-violent, stationary detainee constituted excessive force, the right of a non-violent detainee to be free of such force was not yet clearly established in the Circuit at that time—there was ambiguity in applicable Fourth Circuit precedent, although some other Circuits had already clearly established such right.

However, the Fourth Circuit made it evident that, going forward, no such lack of clarity could be asserted by excessive force defendants:

> Rather than accept this deteriorative creep, we intend this opinion to clarify when taser use amounts to excessive force in, at least, some circumstances. A taser, like "a gun, a baton, . . . or other weapon," Meyers, 713 F.3d at 735, is expected to inflict pain or injury when deployed. It, therefore, may only be deployed when a

police officer is confronted with an exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser.

Where, during the course of seizing an out-numbered mentally ill individual who is a danger only to himself, police officers choose to deploy a taser in the face of stationary and non-violent resistance to being handcuffed, those officers use unreasonably excessive force. While qualified immunity shields the officers in this case from liability, law enforcement officers should now be on notice that such taser use violates the Fourth Amendment.

LINK

False Claims Act: Prohibition Against Awarding "Fees and Expenses" Does Not Apply to Deposition "Costs"

Associates Against Outlier Fraud v. Huron Consulting Group, Inc., No. 15-425-cv (2d Cir. Mar. 23, 2016)

Where a Medicare whistleblower firm brought an unsuccessful fraud action against two healthcare intermediaries, it could be required to reimburse their deposition costs, despite language in the False Claims Act which disallows recouping "fees and expenses," according to the Second Circuit; "expenses" are distinct from "costs".

Associates Against Outlier Fraud (AAOF) filed suit against Huron Consulting Group, Inc. (Huron)and Empire HealthChoice Assurance, Inc., (Empire) alleging the two had facilitated excessive Medicare and Medicaid payments to a hospital in New York. AAOF lost the case and the subsequent appeal to the Second Circuit, after which Huron and Empire sought costs under the federal rules. AAOF was ordered by the district court to pay roughly $12,000 total to the two entities for deposition costs. It appealed, arguing costs should not have been awarded because the False Claims Act (FCA), under which it filed suit, only permits reasonable attorney's fees and expenses if the case was "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment." It argued that expenses, as used in the FCA, include costs (e.g. deposition costs) and since all agreed the claims were not frivolous, the district court erred in requiring it pay costs.

The Second Circuit disagreed with AAOF in this second appeal to the Circuit, holding instead that costs and expenses have long had distinct meanings under the Federal Rules. On one hand, costs are the minor, incidental costs of litigation, while on the other, expenses are those borne by litigants for attorneys, experts, consultants, and the like. The Court found this distinction similarly clear in the FCA, pointing out for example

that the FCA incorporates 28 U.S.C. § 1920, which sets forth what exactly can be recouped under the FRCP, and, as another example, that the FCA distinguishes among attorney's fees, costs, and expenses. Ultimately, the Court determined that AAOF's argument would require parsing the FCA and read terms inconsistently in the FCA, and it declined to do so.

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Guns: Carrying Firearms Outside the Home is Not Clearly Established Second Amendment Right and is Not Speech; No § 1983 Action

Chesney v. City of Jackson, No. 14-11097 (E.D. Mich. Mar. 21, 2016)

Denying the plaintiff's argument that openly carrying a firearm in public is a form of expression protected by the First Amendment and is a guaranteed Second Amendment right, a Michigan federal court has found that officers had qualified immunity in detaining and subsequently arresting a man in a state motor vehicle office who was wearing a pistol of his hip, carrying a backpack, muttering to himself and pacing back and forth.

On the one-year anniversary of the Boston Marathon bomb attack, Jeremiah Chesney was arrested at a Michigan Secretary of State vehicle title office after he initially entered with a loaded pistol on his hip and then returned, carrying a backpack and acting suspiciously, muttering to himself and pacing back and forth. A call was placed to police stating that Chesney had a concealed weapon. When officers arrived there were 50 to 60 people waiting in the title office. Chesney ignored officers' requests that he come outside peaceably to speak with them and refused to provide any identification. He was uncooperative when officers attempted to handcuff him and was charged with resisting arrest, ultimately spending 2 days in the county jail. Charges were subsequently dropped. A records check indicated that he had a permit to carry a weapon and that his pistol had been validly purchased and registered.

He sued the arresting officers and the City of Jackson under § 1983, alleging violation of his Second Amendment right to carry a firearm and First Amendment right of expression, as well a Fourth Amendment-based claim for wrongful arrest without probable cause.

Under applicable qualified standards, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Once defendants raise that defense, the burden of proof shifts to the defendant to show that the defendant is not so entitled.

According to the Sixth Circuit "[a] right is not considered clearly established unless it has been authoritatively decided by the United States Supreme Court, the Court of Appeals, or the highest court of the state in which the alleged constitutional violation occurred." *Durham v. Nu'Man*, 97 F.3d 862, 866 (6th Cir. 1996). Along the same lines, the Supreme Court has emphasized that "absent controlling authority," a right may be deemed clearly established only through "a robust consensus of cases of persuasive authority." (citation omitted).

The court found that Chesney's act of openly carrying a gun in a Secretary of State office does not qualify as protected free speech under the First Amendment, and that there is no evidence that the actions taken by the defendant officers were motivated by Chesney's alleged exercise of his right to free speech: speech must be sufficiently imbued with elements of communication "that the message would be understood by those who viewed it." *Spence v. Washington*, 418 U.S. 405, 410-11 (1974). Chesney was ostensibly visiting the office to obtain a new a motorcycle title—he had no sign or other communication advocating for Michigan's new open carry laws.

The court also found that Chesney's Second Amendment claim failed. It noted that *Heller* had only explicitly referenced use of arms to protect the "hearth and home." Neither the Supreme Court nor the Sixth Circuit, as plaintiff acknowledged, had established that open carry was guaranteed by the Second Amendment. And plaintiff's citation of other Circuit's gun cases—including *Peruta, Moore, Kachalsky,* and *Ezell*—did not demonstrate a clearly established consensus that public carry was now the emergent law of the land.

Finally, Chesney's claim of unlawful detention and arrest was unavailing. Under the totality of the circumstances, including his disturbing behavior in a crowded public space with a backpack on and a pistol strapped to his waist, police had probable cause to detain and question Chesney; when he refused to cooperate, the subsequent arrest was justified.

The Eastern District of Michigan held that defendants had qualified immunity on all claims.

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Housing: City's Denial of Developer's Up-Zoning Request May Constitute Disparate Treatment Where Constituents Appear to Harbor Anti-Hispanic Attitudes

Avenue 6E Investments, LLC v. City of Yuma, No. 13-16159 (9th Cir. Mar. 25, 2016)

Reversing the lower court, the Ninth Circuit has found that where a city ignored the recommendation of its zoning commission to allow a Hispanic developer's up-zoning application, apparently due to pressure from constituents with anti-Hispanic views, an action for disparate treatment could proceed.

A family-owned construction business sought to develop a 42-acre site in southeastern Yuma, Arizona (City). The City denied the developer a necessary zoning change that would have increased the density of the project, thus making it financially feasible for the developer. The developer filed suit, alleging the up-zoning denial violated the Equal Protection Clause and the Fair Housing Act (FHA), under both disparate treatment and disparate impact theories. The district court dismissed the developer's Equal Protection Clause and FHA disparate treatment claims, holding the developer failed to state a claim upon which relief could be granted, and then granted summary judgment to the City on the disparate impact claim.

The developer's disparate treatment claim argued Yuma refused its requested up-zone because of discriminatory animus toward Hispanics. It supported its claim with, among other things, statistical evidence showing what City quadrants are majority-White versus majority-Hispanic, the difference in the median income between whites and Hispanics in the City, and the relationship between housing density, location, and cost. The Circuit Court found this evidence important in the analysis and the district court's failure to give it appropriate weight erroneous. As to the facts in the complaint, the Circuit determined they set forth a plausible claim by showing more likely than not that a discriminatory reason motivated the elected officials' up-zone denial. The evidence the Circuit Court found persuasive included animus against Hispanics from the officials' *constituents*, including constituents' use of "code words"– e.g. the public comment was focused on concern that if the development were allowed it bring with it large families, unattended children, parking issues, crime problems, and house residents that lack pride in ownership of their property and that generally fail to maintain their property.

The Court also found that the public comment showed constituents believed the developers were known for building Hispanic neighborhoods and determined that this belief colored the elected officials' decision. Additionally, the Court found it telling that the elected officials, with these community pressures in mind, took the highly unusual step of overruling the recommendations of the zoning commission and planning staff in order to deny the project, a move elected officials had not made in the last seventy-two planning requests.

As to the Developer's second contention, the Circuit Court reversed the lower court's ruling that the availability of similarly-priced and modelled housing in the same quadrant of Yuma (the southeast) prohibited a showing of disparate impact. Instead, the Court held that when determining whether comparable housing exists for purposes of a disparate impact allegation under the FHA, the size of the area matters (the district court's use of an entire quadrant of the city was too broad) and that "truly comparable" housing is not only about the price and model of the homes; it includes desirability factors such as access to parks, grocery stores, drug stores, transportation, and community centers, as well as the quality of the surrounding schools and infrastructure. In short, the Court found that cities may have good reasons to deny development projects, but that when statistical analysis, circumstantial evidence, and direct evidence show conscience and/or unconscious bias played a part in a denial the city is obligated to show its legitimate and credible basis for the denial. Yuma failed to meet that burden in this case.

LINK

Right to Counsel: Government's Seizure of Defendant's "Untainted Assets" Prior to Trial Violates Sixth Amendment Right to Counsel

Luis v. United States, No. 14-419 (U.S. Mar. 30, 2016)

In a 5-3 decision, the Supreme Court has held that governments may not seize "untainted assets" – i.e., those not traceable to the crime – prior to trial, because such a forfeiture would violate the defendant's Sixth Amendment right to obtain counsel.

Sila Luis was indicted on charges related to $45 million in Medicare fraud. She had allegedly created a number of oversees accounts and shell companies, transferred much of the money to her family members and otherwise spent her ill-gotten gains on luxury items, real estate, and travel. At the time of trial, she only had about $2 million dollars left, which the parties stipulated were legitimately earned assets and not those traceable to the alleged Medicare fraud. The federal government sought to freeze her use of those non-fraud related her assets, pursuant to statutory authority. *See* 21 U.S.C. 853.

Luis claimed that the forfeiture of such legitimately obtained assets violated her Sixth Amendment right to counsel. The Eleventh Circuit held that the seizing the assets did not violate her constitutional rights.

In a 5-3 decision, the Supreme Court reversed. Justice Breyer, writing for the majority, held that the "pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment." The Court emphasized that the right at issue

here was “fundamental” and guaranteed by the Constitution and if the government was allowed to freeze the defendant’s legitimate assets before trial the right to secure counsel of one’s choice would be meaningless.

In reaching its conclusion, the Court relied on three considerations. First, the Court balanced the nature of the competing interests: the fundamental right to counsel under the Sixth Amendment versus the government’s interest in securing its punishment of choice and the victims’ interest in restitution. When weighing these interests, the Court concluded that although the government’s interests were important, “compared to the right to counsel of choice, these interests would seem to lie somewhat further from the heart of a fair, effective criminal justice system.” Second, the Court noted that the common-law offered no support for the government’s position and argued to the contrary (a point Justice Thomas relied on in his concurrence). The Court’s third rationale was that upholding the Eleventh Circuit’s decision could significantly erode the right to counsel as Congress could authorize the pretrial seizure of assets in a host of other criminal cases.

Justice Kennedy, joined by Justice Alito, dissented, arguing that the Court’s holding could not be reconciled with its precedents in *Caplin & Drysdale, Chartered v. United States*, 491 U. S. 617, 635 (1989) and *United States v. Monsanto,* 491 U. S. 600 (1989). Those cases, Justice Kennedy pointed out, “make it clear that a defendant has no Sixth Amendment right to spend forfeitable assets (or assets that will be forfeitable) on an attorney” and that the majority’s distinction between legitimate and illegitimate assets made “little sense in cases that involve fungible assets preceded by fraud, embezzlement, or other theft.” He argued that because money is fungible, the majority’s opinion will only serve to reward the clever criminals who “hurry to spend, conceal, or launder stolen property by assuring them that they may use their own funds to pay for an attorney after they have dissipated the proceeds of their crime,” making them the “true winners” of the Court’s opinion. In making his point, Justice Kennedy used this example:

> Assume a thief steals $1 million and then wins another $1 million in a lottery. After putting the sums in separate accounts, he or she spends $1 million. If the thief spends his or her lottery winnings, the Government can restrain the stolen funds in their entirety. The thief has no right to use those funds to pay for an attorney. Yet, if the thief heeds today’s decision he or she will spend the stolen money first; for if the thief is apprehended, the $1 million won in the lottery can be used for an attorney. This result is not required by the Constitution.

The State and Local Legal Center had made this same argument in its amicus brief, which IMLA joined, pointing out that the majority rule would not only frustrate the federal government but also states’ administration of their own forfeiture schemes.

The majority conceded that Justice Kennedy’s argument that money is fungible is a valid one and that “sometimes it will be difficult to say whether a particular bank account contains tainted or untainted funds.” The majority nonetheless brushed these concerns

aside, stating that courts are well-versed in tracing rules and should be able to determine whether the money at issue was tainted or not.

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Transportation Network Companies: Two-Tiered System Imposing Stricter Requirements on Taxis than TNCs May Violate Equal Protection Clause

Boston Taxi Owners Ass'n v. City of Boston, no. 15-10100 (D. Mass. Mar. 31, 2016)

The Massachusetts Federal District Court has denied Boston's motion to dismiss in an Equal Protection challenge by taxi operators against a regulatory scheme which requires traditional taxis to comply with a set of rules but does not impose a similar requirement on Transportation Network Companies. However, the court found that such a two-tiered system did not constitute a taking or a breach of contract or equitable estoppel principles.

In 2008, Boston's Police Commissioner issued so-called Rule 403, defining a taxicab as "[a] vehicle used or designed to be used for the conveyance of persons for hire from place to place within the City of Boston." Rule 403 requires all taxicab operators to possess a medallion, maintain a properly equipped and functioning taxicab, display a hackney license, and belong to an approved dispatch service, among other things. There are currently 1,825 medallions issued by Boston.

In 2012, Uber, Lyft and Sidecar (the Transportation Network Companies) began operating in Boston, relying on drivers who provide pre-arranged transportation services in their own private vehicles. Boston did not enforce Rule 403 against the TNCs.

Massachusetts state requirements, which overlay the Boston rules, were modified to prohibit TNC drivers from soliciting or accepting "street hail" rides. The state laws also instructed the Department of Public Utilities to regulate TNCs by (1) requiring TNCs to obtain a certificate from DPU in order to do business in Massachusetts, (2) ensuring that TNCs and their drivers to carry appropriate liability insurance and (3) requiring TNCs to perform background checks on their drivers. However, the new Boston gubernatorial administration did not permit the DPU to implement the aforementioned duties without a further legislative act.

In early 2015, the Boston Taxi Owners Association and two individual taxicab license owners sued Boston, the Commissioner and various other defendants, asserting federal constitutional, contract and equitable rights. They moved for a preliminary injunction, arguing that Boston had created an arbitrary, two-tiered system that gave the TNCs

unfair advantages. Plaintiffs also alleged that defendants violated their constitutional rights under the Takings and Equal Protection Clauses and their contract rights under Massachusetts law by declining to enforce Rule 403 against TNCs.

The court ruled against plaintiffs on the Takings Clause claim, finding that a decrease in the value of a taxi medallion (allegedly caused because TNCs were not required to have medallions) did not amount to a taking of a property interest. Although a medallion owner could exclude another person from using that specific medallion, the medallion did not provide the owner with the "exclusive right to engage in the taxi business."

Applying rational basis analysis, however, the court found that the Boston scheme likely violated the Equal Protection Clause. Although differences existed between the taxis and the TNCs, those differences were largely the result of Boston's failure to apply Rule 403 to the TNCs. "The City may not treat the two groups unequally and then argue that the results of that unequal treatment render the two groups dissimilarly situated and, consequently, not subject to equal protection analysis. Such circular logic is unavailing." The differing treatment had no "fair and substantial relation" to an asserted goal of increasing the availability of cost-effective transportation, nor was it justified by the argument that greater regulation of TNCs might be preempted in the future by pending state legislation. Thus Boston's motion to dismiss was denied.

The court denied plaintiffs' breach of contract claim, because Boston's sale of medallions was not accompanied by any agreement to provide market exclusivity to medallion holders. Similarly, plaintiffs' promissory estoppel and equitable estoppel claims failed because Boston had not made any promises about exclusivity upon which medallion holders could justifiably rely.

Plaintiffs' initial requests for preliminary injunction 14 months earlier had been denied. However, the court noted that in light of the declining value of taxi medallions due to TNC competition, plaintiffs had made a reasonable showing of their ability to succeed on the equal protection claim, justifying injunctive relief in the near future:

> Therefore, taking judicial notice of recent activity in the Massachusetts General Court with respect to the regulation of TNCs and in expectation of some resolution during the current legislative session, the Court will direct the defendant City of Boston, on or before September 30, 2016, 1) to inform the Court what changes to Rule 403 it intends to adopt regardless of the status of the state law at that time and 2) to show cause why this Court should not enter a preliminary injunction ordering the City to apply Rule 403 to TNCs.

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