SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 52

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TAXICAB SERVICE ASSOCIATION, et al.,

Index Number: 102553-2012

Plaintiffs,

Decision and Order

- against -

THE STATE OF NEW YORK, et al.,

Defendants.

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METROPOLITAN TAXICAB BOARD OF TRADE, et al.,

Index Number: 102472-2012

Plaintiffs,

Decision and Order

- against -

MICHAEL R. BLOOMBERG, AS MAYOR OF THE CITY OF NEW YORK, et al.,

Defendants.

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GREATER NEW YORK TAXI ASSOCIATION, et ano.,

Index Number: 102783-2012

Plaintiffs,

Decision and Order

- against -

THE STATE OF NEW YORK, et al.,

Defendants.

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Arthur F. Engoron, Justice

Motions for preliminary and dispositive relief in all three of the above-titled cases ("TSA," "MTBOT," and "GNYTA," respectively) are hereby consolidated for decision and decided as indicated below.

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 through 63; A through HH; and I to IV, were used in deciding these motions for preliminary and dispositive relief (the rough protocols are: documents of record before documents not of record; then chronologically;

then TSA before MTBOT before GNYTA; then pleadings before other papers; then notices before affirmations/affidavits; then plaintiffs before City before State before Intervenors; then alphabetically):

DOCUMENTS OF RECORD

Papers Arabic Numbered:

1. 4/18/12 - MTBOT - Complaint (subm. w/Brennan 5/7/12 Affirm.)
2. 4/27/12 - TSA - Complaint
3. 5/7/12 - MTBOT - City Defendants' Answer (subm. w/Brennan 5/7/12 Affirm.)
4. 5/7/12 - MTBOT - City Defendants' Notice of Motion for Sum. Jdmt.
5. 5/7/12 - MTBOT - Brennan Affirm. in Support of Sum. Jdmt.
6. 5/7/12 - MTBOT - Yassky Affid. in Support of Sum. Jdmt. (subm. w/Brennan 5/7/12 Affirm.)
7. 5/16/12 - TSA - City Defendants' Answer (subm. w/Brennan 5/16 Affirm.)
8. 5/16/12 - TSA - City Defendants' Notice of Motion for Sum. Jdmt.
9. 5/16/12 - TSA - Brennan Affirm. in Support of Sum. Jdmt.
10. 5/16/12 - TSA - Johns Affid. in Support of Sum. Jdmt.
11. 5/16/12 - TSA - Gerrard Affid. in Support of Prelim. Injunct.
12. 5/16/12 - TSA - Kay Affid. in Support of Prelim. Injunct.
13. 5/16/12 - TSA - Komanoff Affid. in Support of Prelim. Injunct.
14. 5/16/12 - TSA - Mastro Affirm. in Support of Prelim. Injunct.
15. 5/16/12 - TSA - Miller Affid. in Support of Prelim. Injunct.
16. 5/16/12 - MTBOT - Ali Affid. in Support of Prelim. Injunct. (subm. w/OSC papers)
17. 5/16/12 - MTBOT - Sherman Affid. in Support of Prelim. Injunct. (subm. w/OSC papers)
18. 5/17/12 - MTBOT - Fidler Affid. in Support of Prelim. Injunct. (subm. w/OSC papers)
19. 5/17/12 - MTBOT - Mazer Affirm. in Support of Prelim. Injunct. (subm. w/OSC papers)
20. 5/17/12 - MTBOT - Rattner Affid. in Support of Prelim. Injunct. (subm. w/OSC papers)
21. 5/18/12 - MTBOT - Amended Complaint
22. 5/18/12 - MTBOT - Brinckerhoff Affirm. in Support of Prelim. Injunct. (subm. w/OSC papers)
23. 5/21/12 - TSA - Order to Show Cause Seeking Prelim. Injunct.
24. 5/21/12 - MTBOT - Order to Show Cause Seeking Prelim. Injunct.
25. 5/24/12 - GNYTA - Complaint (subm. w/OSC papers)
26. 5/25/12 - GNYTA - Order to Show Cause for Prelim. Injunct.
27. 5/25/12 - GNYTA - Mintz Affirm. in Support of Prelim. Injunct. (subm. w/OSC papers)
28. 5/29/12 - TSA - Chhabra Affid. in Opp. to Prelim. Injunct. (subm. w/Brennan 5/30/12 Affirm.)
29. 5/29/12 - TSA - Chun Affid. in Opp. to Prelim. Injunct. (subm. w/Brennan 5/30/12 Affirm.)
30. 5/29/12 - TSA - Miller Affid. in Opp. to Prelim. Injunct. (subm. w/Brennan 5/30/12 Affirm.)
31. 5/29/12 - MTBOT - Chhabra Affid. in Opp. to Prelim. Inj. (subm. w/Brennan 5/30/12 Affirm.)
32. 5/30/12 - TSA - State Defendants' Notice of Cross-Motion to Dismiss
33. 5/30/12 - TSA - Gerrard Reply Affirm. in Support of Prelim. Injunct.
34. 5/30/12 - TSA - Komanoff Reply Affirm. in Support of Prelim. Injunct.
35. 5/30/12 - TSA - Palumbo Reply Affid. in Support of Prelim. Injunct.
36. 5/30/12 - TSA - Brennan Affirm. in Opp. to Prelim. Injunct.
37. 5/30/12 - MTBOT - Brennan Affirm. in Opp. to Prelim. Injunct.
38. 5/30/12 - GNYTA - Brennan Affirm. in Opp. to Prelim. Injunct.

39. 5/30/12 - GNYTA - Goldberg Affirm. in Opp. to Prelim. Injunct.
40. 5/31/12 - TSA - Miller Reply Affirm. in Support of Prelim. Injunct.
41. 6/11/12 - TSA - Goldstein Affirm. in Opp. to Defendants' Dispositive Motions, etc. (undated)
42. 6/11/12 - TSA - Shapiro Affirm. in Opp. to Defendants' Dispositive Motions, etc.
43. 6/11/12 - MTBOT - City Defendants' Answer to Amended Complaint
44. 6/11/12 - MTBOT - Plaintiffs' Notice of Cross-Motion for Partial Sum. Jdmt.
45. 6/11/12 - MTBOT - Brinckerhoff Affirm in Opp. to Sum. Jdmt., etc.
46. 6/13/12 - TSA - Plaintiffs' Notice of Cross-Motion for Sum. Jdmt., etc.
47. 6/15/12 - TSA - Yassky Reply Affid. in Support of Sum. Jdmt., etc.
48. 6/15/12 - TSA - Altamirano Affid. in Opp. to Prelim. Injunct., etc.
49. 6/15/12 - TSA - Garcia Affid. in Opp. to Prelim. Injunct., etc.
50. 6/15/12 - TSA - Genere Affid. in Opp. to Prelim. Injunct., etc.
51. 6/15/12 - TSA - Santiago Affid. in Opp. to Prelim. Injunct., etc.
52. 6/15/12 - MTBOT - Altamirano Affid. in Opp. to Prelim. Injunct., etc.
53. 6/15/12 - MTBOT - Garcia Affid. in Opp. to Prelim. Injunct., etc.
54. 6/15/12 - MTBOT - Genere Affid. in Opp. to Prelim. Injunct., etc.
55. 6/15/12 - MTBOT - Santiago Affid. in Opp. to Prelim. Inj., etc. (subm. w/Altamirano Affid.)
56. 6/16/12 - TSA - Brennan Affirm. in Support of Sum. Jdmt.
57. 6/22/12 - TSA - Grossmann Reply Affirm. in Support of Sum. Jdmt.
58. 6/22/12 - MTBOT - Shanker Affirm. in Support of Prelim. Injunct., etc.
59. 6/22/12 - MTBOT - Kabessa Affid. in Support of Prelim. Injunct., etc.
60. 6/22/12 - MTBOT - Balin Affirm. in Support of Prelim. Injunct., etc.
61. 6/27/12 - MTBOT - Altamirano Reply Affid. in Opp. to Prelim. Injunct., etc.
62. 6/29/12 - GNYTA - City Defendants' Answer (e-mailed 7/20/12)
63. 7/7/12 - GNYTA - Stipulation and Order

The following papers were also read in support of or opposition to the motions:

DOCUMENTS NOT OF RECORD

Papers Lettered:

A. 5/7/12 - MTBOT - City Defendants' Memo in Support of Sum. Jdmt.
B. 5/16/12 - TSA - City Defendants' Memo in Support of Sum. Jdmt.
C. 5/17/12 - TSA - Plaintiffs' Memo in Support of Prelim. Injunct.
D. 5/18/12 - MTBOT - Plaintiffs' Memo in Support of Prelim. Injunct.
E. 5/25/12 - MTBOT - De Blasio Amicus Memo in Support of Prelim. Injunct.
F. 5/30/12 - MTBOT + TSA - City Defendants' Memo in Opp. to Prelim. Injunct.
G. 5/30/12 - TSA - State Defendants' Memo in Opp. to Prelim. Injunct., etc.
H. 5/30/12 - MTBOT - State Defendants' Memo in Opp. to Prelim. Injunct., etc.
I. 5/31/12 - TSA - Plaintiffs' Reply Memo in Support of Prelim. Injunct.
J. 5/31/12 - MTBOT - Plaintiffs' Reply Memo in Support of Prelim. Injunct.
K. 6/4/12 - TSA - Mastro Letter (re: City/State)
L. 6/5/12 - ALL - Binder Letter (re: City/State)
M. 6/6/12 - ALL - Platton Letter (re: City/State)
N. 6/8/12 - TSA - Mastro Letter (re: City/State)

O. 6/9/12 - MTBOT - Brinckerhoff Letter (re: City/State)
P. 6/11/12 - TSA - Plaintiffs' Memo in Opp. to Defendants' Dispositive Motions, etc.
Q. 6/15/12 - TSA - City Defendants' Reply Memo in Support of Sum. Jdmt., etc.
R. 6/15/12 - TSA - State Defendants' Reply Memo in Support of Dismissal (w/corrected p. 11)
S. 6/15/12 - TSA - Intervenor Defendants' Memo in Opp. to Prelim. Injunction, etc.
T. 6/15/12 - MTBOT - State Defendants' Reply Memo in Support of Sum. Jdmt.
U. 6/15/12 - MTBOT - Intervenor Defendants' Memo in Opp. to Prelim Injunct., etc.
V. 6/16/12 - TSA - City Defendants' Memo in Support of Sum. Jdmt.
W. 6/18/12 - MTBOT - Borough Pres. Stringer's Amicus Memo in Support of Sum. Jdmt.
X. 6/20/12 - GNYTA + TSA - Letter of Steven G. Mintz re: CPLR 3211(c)
Y. 6/21/12 - GNYTA + TSA - Letter of Binder re: "Takings" and Discovery
Z. 6/21/12 - GNYTA + TSA - Letter of Platton re: CPLR 3211(c)
AA. 6/22/12 - TSA - Plaintiffs' Reply Memo in Support of Sum. Jdmt.
AB. 6/22/12 - TSA - Mastro Letter re: "Takings"
AC. 6/22/12 - MTBOT - Plaintiffs' Reply Memo in Support of Partial Sum. Jdmt., etc.
AD. 6/27/12 - MTBOT - City Defendants' Memo and Reply Memo
AE. 6/28/12 - GNYTA + TSA - Mintz Letter re: CPLR 3211(c)
AF. 6/29/12 - TSA - Mastro Letter re: Noel (including Exhs. A-C, as supplemented)
AG. 7/2/12 - TSA - Binder Letter re: Noel
AH. 7/2/12 - TSA - Platton Letter re: Noel

The following papers are noted in passing.

Papers Roman-Numbered:

I. 5/31/12 - ALL - Transcript of Oral Argument
II. 6/1/12 - ALL - Temporary Restraining Order
III. 7/7/12 - GNYTA - Stipulation and Order (Mintz, Brennan, Platton, Saxl, Engoron)
IV. 7/13/12 - GNYTA - Ministerial Decision of 7/13/12

Upon the foregoing papers, plaintiffs are granted summary judgment on their "home rule," "double enactment," and "exclusive privileges claims"; and defendants are granted summary judgment on plaintiffs' "improper delegation," "takings," and "environmental review" claims.

The Protocols

In these three cases, all plaintiffs are united in interest against the subject legislation, and all defendants are united in interest in support of the subject legislation. Furthermore, with only a very few exceptions, which are of theoretical interest but practical irrelevance, each side's arguments are consistent and coherent. Thus, the Court will refer to each side collectively, without differentiating between the parties. Generally, citations for quotations and references will only be given for papers of record.

The Players

Plaintiff Taxicab Service Association ("TSA") consists of not-for-profit, member-owned credit union lenders that finance New York City taxicab license ("medallion," named for the metal hood ornament affixed to legal taxicabs) purchases. The other TSA plaintiffs are TSA members. Plaintiff Metropolitan Taxicab Board of Trade ("MTBOT") is a trade association of New York City taxicab medallion owners. Plaintiff New York City Council Member Lewis A. Fidler represents the 46th Councilmanic District, in Brooklyn. The other MTBOT plaintiffs are medallioned taxicab owners and/or drivers. Plaintiff Greater New York Taxi Association is an association of medallioned taxicab owners. The other GNYTA plaintiff is a member. Defendant The New York City Taxi and Limousine Commission ("TLC"), an executive-branch agency, was created by New York City Council Local Law 12 of 1971, passed pursuant to New York City Charter Chapter 65, § 2300, and has broad powers to regulate all for-hire motor vehicles in New York City. Defendant David Yassky is Commissioner of the TLC (and, ironically, a former member of the City Council). Defendants The State of New York, The New York State Assembly, The New York State Senate, New York State Governor Andrew M. Cuomo, The City of New York, and New York City Mayor Michael R. Bloomberg presumably need no introduction.

Factual Background

New York City regulation of "taxicabs" may pre-date the invention of the internal combustion engine; its origins are shrouded in the mists of time. Looking back in 1937, a court noted that "The use of the public streets for hire has … always been treated as a privilege granted by the city." Rudack v Valentine, 163 Misc 326, 326 (Sup Ct, NY County 1937); see also Yellow Taxicab Co. v Gaynor, 82 Misc 94, 108 (Sup Ct, NY County 1913) ("The right of a municipality to establish public hack stands has been recognized and acted upon by the city of New York, from early times, and is but an incident of the right to license and regulate those who ply the trade of hackmen for hire.").

The Schaller Consulting Company (WWW.SCHALLER CONSULT.COM) has painted (TSA Cplt Exh. D) a fascinating portrait of the formative years of New York City's fabled taxicab industry:

> During the 1920s and 1930s, easy entry into this all-cash business led to an oversupply of taxis, resulting in traffic congestion, fare-cutting wars, low driver wages, inadequately insured vehicles, and other unsafe and sometimes illegal activities. The Great Depression created an influx of unemployed workers which worsened these problems, with the number of cabs spiraling to 21,000 in 1931.
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> ***
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> To address problems of oversupply, in 1937 the City Board of Aldermen enacted [and Mayor Fiorello La Guardia signed] an ordinance [Chapter 27-a of the Code of Ordinance] sponsored by Alderman Lew Haas (thus, "the Haas Act") to freeze the number of taxi [medallions] at 13,595, the number then outstanding. New York thus joined … other [major] cities in placing a cap on the number of taxicabs [i.e., motor vehicles allowed to pick up street hails (infra) anywhere in New York City]. Most of these cities did not issue new taxi licenses for 50 years or more.

In 1938, the New York City Council assumed control over the medallioned taxicab industry. Over

time, attrition decreased the number of outstanding medallions to 11,787. In 1996, pursuant to State legislation in response to a "home rule message" (see below) by the New York City Council, the City auctioned an additional 400 medallions. In 2004, pursuant to another City Council "home rule message," the City auctioned an additional 900 medallions. In 2006, pursuant to a third City Council "home rule message," the City auctioned an additional 150 medallions.

Currently, approximately 43,000 licensed taxicab drivers, in 13,237 (11,787 + 400 + 900 + 150) medallioned vehicles (often called "yellow taxicabs," for their mandatory paint job), more than 5,000 of which are individually owned and operated, and 231 of which are wheelchair-accessible, provide 240 million rides to 8 million residents and 40 million visitors, generating $2.5 billion annually. At the same time, the non-medallioned "livery" industry has some 38,000 licensed drivers in 23,000 vehicles that are affiliated with 450 bases.

The Legislative Background

Our story proper begins in or about January 2011, when Mayor Bloomberg first proposed allowing non-medallioned "livery" vehicles to accept street hails (i.e., a person standing on the street waving to vacant taxicabs to be picked up, as opposed to a trip pre-arranged by telephone or other means) outside of Manhattan. In a January 18, 2011 e-mail to the TLC's distribution list (Brinckerhoff 5/18/12 MTBOT Affirm. Exh. 1), Commissioner Yassky wrote, "Tomorrow, Mayor Bloomberg is delivering his annual 'State of the City' speech [in which] he will propose that livery cars should be able to accept street hails [under certain circumstances]." Further, "there will be a full legislative process on this (it requires City Council approval), and … I expect the City Council may seek [some changes]. * * * Council approval is likely to take months." In an accompanying memorandum to the Mayor, Yassky (and a co-author) note the "Need for Council Approval … Implementing this five-borough taxi plan will require authorizing City Council legislation." In his January 19, 2011 "State of the City" address, Mayor Bloomberg proposed allowing livery street hails.

In early February the Mayor's Office of Legislative Affairs submitted to the City Council a proposal to amend the Administrative Code to authorize livery vehicles to accept street hails under certain conditions. The medallioned taxicab industry opposed the proposal. Throughout March and April, the TLC and the industry negotiated various proposals. In May, Commissioner Yassky traveled to Albany several times to seek legislative support for a particular "compromise proposal." In late May and early June the livery industry rallied against the "compromise proposal." The State Legislature then drafted a bill that essentially favored the livery industry over the medallioned taxicab industry. Naturally, the medallioned taxicab industry howled.

By then, as detailed in Michael M. Grynbaum, Legislature Approves Bloomberg Plan to Allow Street Hails of Livery Cabs, New York Times, June 24, 2011 (Brinckerhoff 5/18/12 MTBOT Affid. Exh. 2), the political machinations had taken on a "cloak and dagger" aspect:

> [as of mid-June], it did not appear that the plan would happen at all. Members of the City Council, longtime recipients of the taxi industry's largesse, appeared reluctant to pass it.
>
> [T]he city's chief Albany strategis[t] began throwing ideas back and forth with …

> counsel for … the Assembly speaker. What if there was a way, they wondered, to avoid a Council vote entirely?
>
> The crucial revelation involved a simple shift of interpretation. Because of legal quirks, taxi matters had long been dealt with at the state level, but the Council was usually expected to approve any plan under a so-called home rule clause.
>
> The Bloomberg team, in consultation with its lawyers, determined that this requirement was based more on tradition than any legal imperative.
>
> Final preparations were made on a frenetic Saturday. Mr. Yassky [was watching] "Dial M for Murder" at the Film Forum on West Houston Street; he sat in an aisle seat to ensure he could duck out to take Mr. Lasher's many phone calls.

On June 18, 2011, Assembly Member Carl Heastie introduced a bill to increase the number of vehicles allowed to pick up street hails in New York City. Similar legislation was introduced in the Senate. On June 21 the Assembly passed its bill, and on June 24 the Senate passed the same bill.

Although passed by both houses, the bill initially encountered some rough sledding. Kenneth Lovett, Taxi Bill Dying in Albany, New York Daily News: Daily Politics, Sept. 19, 2011 (available online). On October 4, amid much wrangling and posturing, Governor Cuomo stated that "[t]he optimum goal is to design a plan that provides taxi access to the outer boroughs, access to the disabled, revenue for the City, and respects the medallion franchise." On December 9 the Assembly sent the bill to the Governor for approval. On December 23 the Governor signed Chapter 602 of the Laws of 2011. In or about early February, 2012, both legislative houses passed a "Chapter Amendment." On February 17 the Governor signed Chapter 9 of the Laws of 2012, which amended the prior law. (This Court will refer to the resulting law, known as the "Street Hail (for "Hail Accessible Inter-borough License") Livery Law," as "the subject legislation," as it addresses more than just street hails and livery vehicles.)

The Subject Legislation

Simply put, Chapter 602 of the Laws of 2011, as amended by Chapter 9 of the Laws of 2012 (Brinckerhoff 5/18/12 MTBOT Affirm. Exh. 5), allows the Mayor to issue up to 2,000 new taxicab medallions, restricted to wheelchair-accessible vehicles; allows the TLC to issue 18,000 "HAIL licenses," valid for street hails in Manhattan north of 96th Street on the east side and north of 110th Street on the west side and the other four boroughs, except at the airports (this Court will refer to the excluded area as the "MCBD+A," for "Manhattan Central Business District plus Airports"; the parties sometimes refer to it as the "Hail exclusionary zone"), with drop-offs allowed anywhere; and mandate certain wheelchair-accessibility quotas for medallioned taxicabs and HAIL vehicles. Of course, "the devil is in the details."

Section 1 (id. at 1), "Legislative findings," states, in full, as follows:

> The legislature finds and declares that the public health, safety and welfare of the residents of the state of New York traveling to, from and within the city of New York is a matter of substantial state concern, including access to safe and reliable mass

> transportation such as taxicabs. The majority of residents and nonresidents of the city of New York do not currently have sufficient access to legal, licensed taxicabs available for street hails in the city of New York. Additionally, the legislature finds and declares that it is a matter of public health, safety and welfare to ensure adequate and reliable transportation accessible to individuals with disabilities in the city of New York. Currently, approximately 1.8 percent of the city's approximately thirteen thousand yellow taxicabs is accessible to individuals with disabilities, and an even smaller percentage of the city's approximately twenty-three thousand livery vehicles is accessible. This supply of accessible vehicles is insufficient to provide adequate and reliable transportation for the residents of and the commuters and visitors to New York city who have disabilities and therefore inhibits their basic daily activities. This lack of accessible vehicles also prevents individuals with disabilities from being able to rely on the street hail system to get to a destination quickly, particularly in an emergency, or to travel to a location not near a subway or bus stop. Improving access to mass transportation, including taxicabs, for the residents of and the commuters and visitors to New York city further these matters of substantial state concern.

Section 4 (id. at 2) authorizes the TLC to issue up to 450 for-hire vehicle base station permits, for $3,000 each, valid for three years, with automatic renewal upon good-standing status and payment of the renewal fee. The initial issuance is limited to current base stations. Furthermore, the TLC "shall not be required to engage in any review provided for by any provision of law or make or obtain any determination not expressly required by this section."

Section 5 (id. at 3) authorizes the TLC to issue, over the course of three years, up to 18,000 HAIL licenses, 20% of which must be for wheelchair-accessible vehicles. During the first three years, HAIL licenses may be issued only to owners of for-hire vehicles or for-hire drivers who have been licensed by the TLC for at least one year and are in good standing with the TLC. HAIL licenses are valid for three years. Those licenses issued the first year cost $1,500; the second year, $3,000; and the third year, $4,500. The licenses are transferable to for-hire drivers in good standing with the TLC. Renewal is automatic upon good-standing status and payment of the renewal fee. Furthermore, the TLC "shall not be required to engage in any review provided for by any provision of law or make or obtain any determination not expressly required by this act."

Section 6 (id. at 2), the "poison pill," provides that the subject legislation "shall be construed as a whole, and all parts of it are to be read and construed together. If any part of this act … shall be adjudged by any court of competent jurisdiction to be invalid, the remainder of this act shall be invalidated and shall be deemed to have not taken effect."

Section 8 (id. at 5) provides that the City "may, acting by the Mayor alone, … authorize the TLC … to issue up to two thousand taxicab [medallions] in addition to those already issued." The medallions are restricted to wheelchair-accessible vehicles; must be auctioned (the City to profit from the proceeds); and must be fully transferable.

Section 9 (id. at 6) provides HAIL licensees "shall be eligible to apply [to the TLC] for grants in an amount up to fifteen thousand dollars, which shall be applied towards the costs of" purchasing a wheelchair-accessible vehicle or retro-fitting one to be so, "for use as a HAIL vehicle. The total

amount of such grants shall not exceed fifty-four million dollars."

Section 11 (id. at 7) provides, in effect, that medallioned taxicabs can pick up passengers anywhere in the City, but only by street hail; HAIL vehicles can pick up passengers anywhere outside the MCBD+A, by street hail or pre-arrangement; and other for-hire vehicles can pick up passengers only by pre-arrangement and only outside the MCBD+A.

Section 14 (id. at 9) imposes a $0.50 tax on every HAIL vehicle owner and on every affiliated HAIL base for every HAIL trip by the vehicle.

Section 23 (id. at 12) provides that in enforcing the subject legislation, "the entity that issued the summons for [any] violation," which apparently could mean the New York State Police, the New York City Police, the Port of New York Authority Police, the Metropolitan Transportation Authority Police, and/or TLC enforcement agents, receives and retains any money collected pursuant thereto.

Section 31 (id. at 15) provides that the subject legislation shall take effect immediately, unless, for various specified reasons, it does not. The subject legislation apparently went into effect upon signing.

The Procedural Background

In April and May 2012, plaintiffs commenced the instant litigation, seeking:

> (1) declarations that the subject legislation violates the following provisions of the State Constitution: art IX, § 2(b)(2) (the "home rule" provision), art III (limiting legislative branch delegations), art IX, § 2(b)(1) (the "double enactment" clause); art III, § 17 (the "exclusive privileges" clause); art I, § 7 (and the Fifth Amendment to the United States Constitution) (the "takings" clauses);
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> (2) a declaration that the City must undertake State Environmental Quality Review Act review of the potential issuance of the 18,000 HAIL licenses;
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> (3) an injunction against implementation of the subject legislation, including, but not limited to, issuing HAIL licenses, HAIL base permits, and new taxicab medallions; and
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> (4) costs, including reasonable attorney's fees.

In late May plaintiffs moved, by Orders to Show Cause, for injunctive relief. In a June 1 Temporary Restraining Order ("TRO") this Court, solely addressing the "home rule" issue (see below), "temporarily restrained [defendants], pending further order of this Court, from implementing any aspect of the subject legislation, conditional on plaintiffs collectively posting a bond," which they did. (Mostly in light of today's decision, this Court sees no reason to address plaintiffs' complaints that defendants, particularly the TLC, are violating the TRO.)

Several parties have moved or cross-moved, pursuant to CPLR 3212, for summary judgment. Summary judgment motions "search the record," CPLR 3212(b), and the Court "may" grant summary judgment to any party "entitled" thereto. All parties agree that the cases are ripe for summary judgment. Furthermore,

pursuant to CPLR 3212(e), "summary judgment may be granted as to one or more causes of action, or part thereof," a device of which this Court is taking full advantage herein.

The "Standing" Issue

As defendants point out, citing Society of the Plastics Indus., Inc. v County of Suffolk, 77 NY2d 761, 769 (1991), "[s]tanding is a threshold issue that must be established by the party seeking judicial review." Defendants essentially argue that plaintiffs would not suffer "injury in fact distinct from the general public"; any injury would be speculative; and any injury falls outside the "zone of interest" to be protected. This Court disagrees. Plaintiffs would, in fact, be injured by any decrease in the value of their medallions; some decrease is a distinct, if perhaps not definite, possibility; and plaintiffs, and all New York City citizens, are within the "zone of interest" of the numerous constitutional provisions upon which plaintiffs rely.

Let us say that Andrew lends money to Michael. Matthew cannot sue Michael for that money because (A) Matthew might somehow win, which is bad because (1) Matthew is not entitled to the money, and (2) Andrew might also sue and win, subjecting Michael to a "double recovery"; and, on the other hand, (B) Matthew might loose, which is bad because (1) this might prejudice Andrew's right to recover, and, (2), in any event, the litigation will have been a waste of resources.

In litigation with a broad public dimension, standing is required, as this Court sees the matter, (A) to insure that the parties have an actual stake in the litigation and, thus, an incentive to win, which will foster a correct determination, and (B) to prevent defendants from having to fend off a multiplicity of duplicative lawsuits. As defendants note, "[a]n action to declare a particular law unconstitutional and invalid will not lie by a person who has no actual and material personal interest in the determination sought." Central Westchester Humane Socy. v Hilleboe, 202 Misc 881 (Sup Ct, Westchester County 1952). As defendants state, plaintiffs must demonstrate that they have "an actual legal stake in the matter in dispute."

To this Court, none of these concerns are present here. Although the TSA plaintiffs may be one level removed from a direct economic interest (not to downplay that interest), the MTBOT and GNYTA plaintiffs are owners and drivers; any "taking" will harm their economic interest, and any improper environmental review will harm their health. The more esoteric constitutional issues ("home rule," "improper delegation," "exclusive privileges," and "double enactment") that the subject legislation (arguably) raises are being challenged by a City Council Member (Lewis Fidler) (see Fidler 5/17/12 MTBOT Affid.) as a party; by the New York City Public Advocate (Bill de Blasio, apparently an ex officio member of the Council), as an amicus curiae; and various persons and entities in the medallion and livery business, all represented by able counsel. In short, we have a vigorous challenge by capable persons who stand to be harmed. The defendants are being represented by the equally capable Corporation Counsel of the City of New York and Attorney General of the State of New York. Both sides are buttressed by vociferous intervenors.

When defendants challenge "standing" in public-dimension litigation, this Court considers whether any other plaintiff(s) would do a better job of contesting the law at issue? Here, the answer is clearly, "no."

Council Member Fidler has a particularly strong claim to standing. Silver v Pataki, 96 NY2d 532, 539 (2001) (usurpation of power belonging to legislative body confers standing on individual legislators); see Council of City of New York v Giuliani, 183 Misc 2d 799, 809 (Sup Ct, Queens County 1999) (holding that Council members have an interest in "delineation of the powers to be accorded to the legislative branch in

relation to those sought to be exercised by the executive branch"). Defendants claim that Giuliani only held that "individual council members have standing to join the Council itself and the Council speaker in an action against the Mayor." However, Justice David Goldstein did not qualify Council member standing on the identity of a co-party. Likewise, this Court sees no reason to do so; if you have standing, you have it, regardless of whether you are suing alone. See also Wambat Realty Corp. v State, 41 NY2d 490 (1977) (reaching merits of "home rule" challenge by private party [a land "owner and would-be developer"]).

As the owner/driver plaintiffs argue, their claim to standing is particularly acute because although increased competition normally is insufficient to confer standing, a cardinal purpose of the City's limitation on medallions is to reduce competition to manageable levels. See Our Lady of Good Counsel, Roman Catholic Church and Sch. v Ball, 45 AD2d 66, 71 (2d Dept 1974), affd 38 NY2d 780 (1975) (allowing standing to plaintiffs that would be hurt by increased competition). Moreover, several individual plaintiffs arguably have standing to assert plaintiffs' "exclusive privileges" claim because, they say, if the law is allowed to stand, they would want to purchase HAIL licenses but would not be allowed to do so.

Defendants understandably cite to Friedman v Town Clerk of Town of Hempstead, 62 AD3d 699, 700 (2d Dept 2009), which allowed a municipality to license more taxicab companies because "[t]he only potential injury suggested in the record is an increase in business competition which, considered alone, is insufficient to confer standing." However, here, the limitation on the number of taxicab medallions that the City has imposed, and the State is seeking to override, was specifically designed to decrease the ruinous competition detailed in the Schaller Report (supra). Friedman did not address a legislative intent to restrict taxicab competition in Hempstead.

Defendants also rely on Russell v Board of Plumbing Examiners, 74 F Supp 2d 349, 350 n 1 (SDNY 1999), affd 242 F3d 367 (2d Cir 2001), for the proposition that only a "local municipality" has standing to bring a "home rule" challenge. This Federal trial court footnote appears to represent a minority view.

"Where there is a right, there is a remedy." All citizens have a right to be free of unconstitutional laws. The remedy here would be a declaration of unconstitutionality. A theoretical "standing" challenge should not stand athwart the two. "A fundamental tenet of our system of remedies is that when a government agency seeks to act in a manner adversely affecting a party, judicial review of that action may be had." Dairylea Coop., Inc. v Walkley, 38 NY2d 6, 10 (1975) (licensed dealer had standing to challenge license expansion that could result in destructive competition). Even Society of Plastics Indus., Inc. v. County of Suffolk, 77 NY2d 761, 779 (1991), upon which defendants rely, states that standing challenges should not be used "to insulate governmental action from scrutiny." Cf. Abraham Lincoln, Gettysburg Address ("government of the people, by the people, for the people"). Plaintiffs colorably argue that if only political subdivisions have standing to bring "home rule" challenges, "the branches of local government could collude anytime with impunity, because backroom deals would be insulated from any Home Rule Law Challenge."

Furthermore, standing law is liberalizing. The Court of Appeals has "recognized the expanding scope of standing to sue." Fritz v Huntington Hosp., 39 NY2d 339, 345-46 (1976). "Only where there is a clear legislative intent negating review or lack of injury in fact will standing be denied." Matter of Dairylea Coop., Inc. v Walkley, 38 NY2d 6, 11 (1975) (citations omitted).

Thus, this Court finds that plaintiffs have standing to contest all issues herein.

The "Home Rule" Issue

Turning to the merits, plaintiffs bear a heavy burden in demonstrating that a State statute is unconstitutional. Bordeleau v State, 18 NY3d 305, 313 (2011); LaValle v Hayden, 98 NY2d 155, 161 (2002) (plaintiffs must demonstrate unconstitutionality "beyond a reasonable doubt"); Hotel Dorset Co. v Trust for Cultural Resources, 46 NY2d 358, 370 (1978) ("There is a simple, but well-founded, presumption that an act of the Legislature is constitutional and this presumption can be upset only by proof persuasive beyond a reasonable doubt.").

However, plaintiffs have a trump card, too; the State Constitution is surprisingly solicitous of local democracy, of self-rule by the State's numerous political subdivisions. Article IX ("Local Governments"), § 1 constitutes a "Bill of Rights for Local Governments":

> Effective Local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of ths constitution:
>
> (a) Every local government … shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.
>
> (b) All officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local governments as may be provided by law.

Article IX, § 2(b)(2), the so-called "home rule" provision, states, as here relevant, that

> the legislature … [s]hall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership.

Article IX, § 3(d)(4) defines a "special law" as a "law which in terms and in effect applies to one or more, but not all … cities." In contrast, § 3(d)(1) defines a "general law" as one "which in terms and in effect applies alike to all … cities." The subject legislation is a "special law," as it affects only one city, to wit, New York City.

Furthermore, as plaintiffs argue, and as the City defendants concede (but the State defendants stubbornly do not), the subject legislation relates to the "property, affairs or government" of New York City by regulating the local taxicab industry; shifting the balance of power between the City's executive and legislative branches; affecting City budgeting; and affecting City environmental affairs.

New York City already pervasively regulates its taxi industry. For example, NYC Charter § 2303(b)(4) provides that "[a]dditional taxicab licenses [i.e., medallions] may be issued from time to time only upon the enactment of a local law providing therefore." NYC Admin Code § 19-504(a)(1) provides that "no motor

vehicle other than a duly licensed [i.e., medallioned] taxicab shall be permitted to accept hails from passengers in the street." NYC Admin Code § 19-507(a)(4) provides that "[n]o driver of a for-hire vehicle shall accept passengers unless the passengers have engaged the use of the for-hire vehicle on the basis of telephone contract or pre-arrangement." NYC Admin Code § 19-516(a) provides that "[f]or-hire vehicles may accept passengers only on the basis of telephone contract or pre-arrangement."

So how can the State tell the City how to regulate its taxicab affairs without a "home rule message"? That brings us to the judicially-created "substantial State interest" exception to the constitutionally-mandated "home rule message" requirement. In Adler v Deegan, 251 NY 467 (1929), Chief Judge Benjamin Nathan Cardozo famously carved out an exception to "home rule." The State did not

> surrender[] the power to enact local laws by the usual forms of legislation where subjects of State concern are directly and substantially involved, though intermingled with these, and perhaps identical with them, are concerns proper to the city.
>
> * * *
>
> The test is rather this, that if the subject be in a substantial degree a matter of State concern, the Legislature may act, though intermingled with it are concerns of the locality.

Id. at 490-91.

The substantial State interest exception is alive and well. In City of New York v Patrolmen's Benevolent Assn., 89 NY2d 380, 391 (1996) ("PBA I"), the Court summarized the law as follows:

> for the State to enact a special law on local affairs without complying with home rule requirements, its interest in the subject matter must be substantial. Moreover, and as a corollary to the constitutional balancing of overlapping local and State interests requiring that the "subjects of State concern [must be] directly and substantially involved," the enactment must bear a reasonable relationship to the legitimate, accompanying substantial State concern. Otherwise, "[i]nterference in such a degree would be intrusion upon a concern or interest of the city without a compensating offset in the advancement of a concern or interest of the [S]tate." Thus, State legislation impacting especially on a locality is only valid if "it can be stated that the statutes in question 'serve a supervening State concern'" and "relate to life, health, and the quality of life [of the People of the State]."
>
> Finally, the substantial State concern which will be permitted to trump constitutional home rule requirements regarding a particular enactment cannot be derived, as the PBA suggests, purely from speculative assertions on possible State-wide implications of the subject matter, having no support in the language, structure or legislative history of the statute. Again, it would be absolutely inconsistent with the sensitive balancing of State and local interests that has been our tradition in home rule litigation to allow the State to justify legislation inimical to the constitutional values of the home rule article based purely on considerations having no apparent role in its enactment, no matter how plausibly conceived as an afterthought.

Id. at 391-92 (citations omitted). In Patrolmen's Benevolent Assn. v City of New York, 97 NY2d 378, 386

(2001) ("PBA II") the Court noted the "recognized exception to the home rule message requirement … when a special law serves a substantial state concern."

Defendants appear to be correct that most, perhaps the vast majority of, home rule challenges fail. E.g., City of New York v State of New York, 94 NY2d 577, 592 (2000) (law repealing City's commuter tax "accomplishes the clearly expressed legislative objective of easing the burden of those State residents working in New York City but living outside the City limits … where State interests are involved to a substantial degree, in depth or extent, the State may freely legislate without home rule approval, notwithstanding the legislation's impact on local concerns"); Uniformed Firefighters Assn. v City of New York, 50 NY2d 85, 90 (1980) (upholding statute overriding City residency requirement for firefighters because State has interest "in affording residential mobility to members of the civil service"); Board of Educ. v City of New York, 41 NY2d 535, 542 (1977) ("legislation dealing with matters of State concern even though of localized application and having a direct effect on the most basic of local interests does not violate the constitutional home rule provisions"); Wambat Realty Corp. v State of New York, 41 NY2d 490, 493-95 (1977) (upholding zoning and planning for Adirondack Park region); Matter of 241 East 22nd St. Corp. v City Rent Agency, 33 NY2d 134, 141-42 (1973) (rent control "primarily a matter of State concern").

In what may have been the high-water mark for finding a "substantial State interest," the Court of Appeals stated as follows:

> The short of the matter is that neither Constitution nor statute was designed to disable the State from responding to problems of significant State concern …. The issue is … whether the State may override local or parochial interests when State concerns are involved. The issue is, and has been, resolved in favor of State primacy. The price of strong local government may not be the destruction or even the serious impairment of strong State interests. Both article IX of the State Constitution and the Statute of Local Governments make patently clear that that is how the issue should be resolved. For that reason there appear the multiplication of provisos and exceptions in article IX and in the Statute of Local Governments. They are not the product of clumsy draftsmanship but of a fine-tuned sensitivity to the difficult problem of furthering strong local government but leaving the State just as strong to meet the problems that transcend local boundaries, interests, and motivations.

Wambat Realty Corp. v State, 41 NY2d 490, 497-98 (1977). The question is whether "the subject matter in need of legislative attention was of sufficient importance for the State, transcendent of local or parochial interests." Id. at 494.

Indeed, one might say that, as with most Federal Commerce Clause challenges since the Great Depression (notwithstanding the recent United States Supreme Court 5-4 ruling in the Patient Protection and Affordable Care Act), "the house usually wins." But not always. In Osborn v Cohen, 272 NY 55 (1936) the Court of Appeals barred the State from regulating the working hours of New York City firefighters. Also, in City of New York v Patrolmen's Benevolent Assn., 89 NY2d 380 (1996) ("PBA I"), Judge Levine, writing for a unanimous Court, wrote that "because this 'special law,' which relates to the 'property affairs or government' of New York City, was not enacted to further a matter 'of sufficient importance to the State generally,' its enactment without a home rule message from New York City renders the chapter law unconstitutional and unenforceable." Id. at 385 (citations omitted).

The Test

This Court erred (although the result would have been the same) in the TRO (decided and written, let it be said, in the one business day between oral argument, on Thursday, May 31, and imminent implementation of the subject legislation, on Monday, June 4) when it wrote that "the question here is basically whether the number of taxi medallions and the rules of outer-borough hails is primarily a matter of local or state concern." Judge Cardozo expressly rejected a predominance test in Adler, 251 NY at 491 ("Considerations of 'more or less' will lead us into a morass of indecision."). Although Judge Lehman spoke, 251 NY at 496, in dissent when he said that "the degree of interest on the part of … [the] State … may be a relevant factor in the [subject] determination," his words were quoted in Judge Crouch's unanimous decision in Osborn v Cohen, 272 NY 55, 59 (1936). In any event, even Judge Lehman recognized that "preponderance of local concern … would hardly prove a satisfactory test of the validity of legislation. It is not the test created by the Constitution." Also, Osborn recognized, id., that the "degree of interest" is "not the essential or fundamental factor." Still, the relative degree of interest is a factor, see City of New York v Patrolmen's Benevolent Assn., 89 NY2d 380, 391 (1996) ("PBA I"), noting "the constitutional balancing of overlapping local and State interests." In any event, an accurate statement of the test is whether the subject legislation "bear[s] a reasonable relationship to [a] legitimate, accompanying substantial State concern." City of New York v State of New York, 94 NY2d 577, 590 (2000).

Plaintiffs argue that each "essential provision" of the subject legislation must be supported by a separate and distinct State interest. "Because the Legislature cannot do in one act what it would be forbidden in doing in four, each of the [subject legislation's] distinct policies must be analyzed under Home Rule law." Defendants counter that "once it is established that the Legislature is acting in furtherance of State interests … the only remaining question is whether the law is reasonably related to those interests." In this Court's view, a rule of reason should apply. If the State has a substantial interest in the general subject matter, then it must be given some leeway in how it addresses that interest. However, the State should not be allowed to tamper with a City's delicate balance of power; or to sprinkle significant "goody bags" for special interests in the mix; or to dictate implementation down to the finest detail. If, say, the interests are in having more medallions, HAIL licenses, and greater wheelchair-accessibility, it should be enough to require just that, without telling the City who, when, and how to bring that about.

This Court will first examine whether there is a "substantial State concern" and then whether there is a "reasonable relationship" between that concern and the subject legislation.

Deference to Stated Legislative Purpose

The parties are sharply divided on the deference to be accorded the "Legislative findings." Defendants view them as dispositive (if not sacrosanct). Plaintiffs call them a "sham."

Defendants quote City of New York v Patrolmen's Benevolent Assn., 89 NY2d 380, 392 (1996) ("PBA I"), to the effect that "our precedents have consistently relied upon the stated purpose and legislative history of the act in question to find, or reject, a substantial State concern." Plaintiffs point to the words "or reject." In any event, the PBA I court was rather undeferential:

> it would be absolutely inconsistent with the sensitive balancing of State and local interests that has been our tradition in home rule litigation to allow the State to justify legislation

> inimical to the constitutional values of the home rule article based purely on considerations having no apparent role in its enactment, no matter how plausibly conceived as an afterthought.

Id. at 391; cf. City of New York v Village of Lawrence, 250 NY 429, 443 (1929) (in construing "legislative declaration," the "courts are still free to place their own construction upon it, which may be contrary to the construction placed upon it by the Legislature"). Defendants understandably rely on PBA II :

> In determining a substantial state concern, we "rel[y] upon the stated purpose and legislative history of the act in question" … and as Supreme Court aptly noted, the "wisdom of that determination is not for court review here." (188 Misc 2d 146, 152).

97 NY2d at 388 (some citations omitted). There are two problems with this reliance: each of the quotations. The first is from PBA I, which, as just noted, eschewed reliance on pretextual justifications. The second is from the trial court decision in PBA II, in which Supreme Court Justice Bernard Malone, as this Court reads his opinion, was talking about the wisdom of the enactment itself, not the wisdom of the legislative findings supporting it:

> The stated purpose [of the enactment at issue] is to make PERB's collective bargaining dispute procedures available … across the State …. The wisdom of that determination is not for our review here (although there appears to be historical support [for it]), only the question of whether [the enactment] violates Home Rule."

Thus any "wisdom" was distinct from the "home rule question."

Defendants also state that plaintiffs

> paint the Legislature's stated concerns as some kind of pretext. But "settled principles, rooted in basic precepts of separation of powers, hold that the sincerity of the Legislature's finding of a substantial State interest may not be second-guessed."

The "basic precepts of separation of powers" that apply here are that courts are the solid bulwark, the last line of defense, against unconstitutional encroachments on liberty. See generally Brown v Board of Educ. of Topeka, 347 US 483 (1954).

In Osborn v Cohen, 272 NY 55, 59 (1936) the Court eschewed finding a substantial State concern on "asserted facts without foundation in the record."

The "soft white underbelly" of defendants' "home rule" argument may be the fact that after declaring a substantial State interest in more and better taxicab service, including wheelchair-accessibility, rather than pass a law to that effect, the State Legislature transferred authority to the executive branch to accomplish those goals. So rather than a redrawn taxicab industry, we have a redrawn political map. As plaintiffs point out, the "Legislative findings" do not address the power-shifting aspects of the subject legislation, and the State could hardly have a substantial interest in that.

The legislative findings consider taxicabs "mass transportation," which is probably news to most City

residents, who consider trains and busses, but not taxicabs, to be "mass transit." Indeed in their 4/3/12 reply brief in Noel v New York City Taxi and Limousine Commn., Index No. 12-41 (2d Cir, Dec. of 4/28/12) (Americans with Disabilities Act does not require City TLC to mandate that taxicabs be wheelchair-accessible) (submitted with Mastro Letter of 6/29/12, Exh. C), defendants were only too happy to agree that "medallioned … taxicabs are part of an industry 'in which private individuals and entities provide private transportation services on their own behalf.'" This hardly sounds like "mass transportation." On the other hand, as plaintiffs argue (Mastro Letter of 6/4/12, at 1), "public rapid transit in New York City has long been part of an integrated regional public mass transportation system that State-created entities have developed and overseen for decades as a matter of substantial statewide concern." (emphasis added)

The History of Local-versus-State Regulation

The parties vehemently disagree as to whether the history of local-versus-state regulation should inform the "substantial State interest" issue.

New York City has long regulated its own taxicab industry, with a particular emphasis on limiting the number of taxicabs cruising the streets. See e.g. Rudack v Valentine, 163 Misc 326, 327-29 (Sup Ct, NY County 1937), noting "certain present evils and public hazards," such as "excessive competition because of the number of taxicabs," "long hours and inadequate income for taxicab drivers," and "periodic flooding of the streets with unnecessary taxicabs." Indeed, the subject legislation is the first to claim a State interest in regulating taxicabs and livery vehicles in New York City and the first to seek to authorize more taxicab medallions without a City Council "home rule" message. As stated in the TRO, at 3, "[t]his Court has trouble seeing how the provision of taxi service in New York City is a matter that can be wrenched from the hands of City government, where it has resided for some 75 years, and handed over to the State."

The classic formulation favoring an important role for history is in Osborn v Cohen, 272 NY 55, 59 (1936) (barring the State from regulating the working hours of New York City firefighters):

> Historically and traditionally the State has functioned in certain fields of government, the municipalities in certain other fields. While always and unavoidably there has been an obscure zone between the two fields, the basic distinction between them remains. 'Let us,' said CRANE, J., in Adler v. Deegan (p. 478), 'recognize in our decision the useful division which custom and practice have made between those things which are considered State affairs, and those which are purely the affairs of cities.'
>
> * * *
>
> Historically and as a matter of common knowledge, fire departments have been recognized agencies of municipal governments, and their organization, operation and administrative control have been deemed matters of local concern.

Concurring in Adler, Judge Cardozo stated that in determining the "line of division between city and State concerns" courts may resort "to history or to tradition or to the existing forms of the charters." 251 NY at 489.

Interestingly, the law found to be constitutional in Adler was not "a change of municipal government. The same city officers who have been charged with the enforcement of the law regulating the construction and

use of tenements are charged with it to-day." 251 NY at 488. Here, the exclusive authority to determine the number of taxicab medallions has been pulled out from under the City Council.

Defendants point to the fact that as far back as 1936, a State Joint Legislative Committee on Taxicab Operation and Fares, Legis Doc No. 83, at 3, declared that "[s]afe adequate and efficient taxicab operation at just and reasonable rates is an indispensable transportation service auxiliary to rapid transit and other transportation systems in large cities in this State." The committee considered legislation that would have placed the entire statewide taxicab industry under the oversight of a State agency. However, the State Legislature never acted; but the City Board of Aldermen did, with the Haas Act, in 1937. Ever since that time, New York City taxicabs have been firmly ensconced in the City's sphere of influence, without so much as a murmur from the State, until last year, when approached by some factions of City government. Interestingly, the subject legislation appears to be the first instance in which the State Legislature passed a law without a home rule message after having passed laws on the very same subject with a home rule messages. Lest it be thought otherwise, the Mayor cannot issue his own "home rule message." See New York City Charter § 249(b) (Mayor required to submit to City Council "all proposed home rule requests necessary to implement the recommendations made in the executive budget").

For proof that the history of regulation is still a potent force in the modern era, one need look no further than that paragon of State interest, Wambat Realty Corp. v State, 41 NY2d 490, 494 (1977):

> Turning now to the [subject enactment], application to it of these principles leads inexorably to its validity. Of course, the … Act prevents localities … from freely exercising their … powers. That indeed is its purpose and effect, not because the motive is to impair home rule, but because the motive is to serve a supervening State concern transcending local interests. As ably explained at Special Term, preserving the priceless Adirondack Park through a comprehensive land use and development plan is most decidedly a substantial State concern, as it is most decidedly not merely 119 separate local concerns …. All but conclusive of this aspect of the issue is the constitutional and legislative history stretching over 80 years to preserve the Adirondack area from despoliation, exploitation, and destruction by a contemporary generation in disregard of the generations to come.

Id. at 494-95 (emphasis added). Here, there are not 119 separate localities, only one, and at least 75 years of pre-emptive legislation. If anything is conclusive in this litigation, this latter fact should be.

The History of the Subject Legislation

Yet another stark disagreement between the parties is why the State got involved as it did in the City's taxicab industry. According to plaintiffs, buttressed by the newspaper accounts, the Mayor and Commissioner went to Albany because the City Council refused to do his bidding. Arthur Goldstein, who was active in the negotiations, claims (TSA circa 6/11/12 Affirm. ¶¶ 16-17) as follows:

> During the [spring 2011] negotiations, everyone understood that, in the end, the City Council would decide whether and how to legislate any necessary changes to the industry. Eventually, negotiations broke down and the parties failed to reach a compromise. After months of intransigence on the part of the Mayor, no plan was presented to the City Council that would alter the medallion system. The Council never reduced the various proposals to a

> legislative bill, and no "Home Rule" message was ever transmitted to the State Legislature. * * * [T]he Mayor's Office's intransigence on largely achieving the entirety of the Mayor's plan ultimately fell flat with the local legislature.

Commissioner Yassky says that the executive branch of the City went to the State because the plan for new medallions was added to the plan for HAIL licenses; only the State can authorize an auction sale of medallions, because they would be sold for more than administrative costs, the excess being considered a tax, and only the State can authorize tax collections. However, this "trip to Albany" bypassed the City Council, which he originally wrote would have to issue a "home rule message" approving any new taxicab plan, and doubtless would have done so if the various interests had agreed on a plan. According to the "paper of record" (see Grossmann Affirm. 6/22/12 Exh. C), after "months" of City Council negotiations, "the Bloomberg administration persuaded state legislators to introduce a plan that circumvents the Council." Michael Grynbaum and Christine Haughney, Bloomberg Move Exploits Taxi Industry's Limited Reach, NY Times, June 21, 2011.

All in all, plaintiffs' version of events rings true; the "legislative findings" appear to be "the tail that wags the dog." The written record suggests that the determination to rescramble the City taxicab industry (and, incidentally, government) came first, the "legislative findings" came later, quite possibly with the subject litigation in mind. Although placed first in the statute, the findings probably came last in the legislators' minds.

Still, newspaper accounts do not resolve the "substantial State interest" issue. What this Court finds more telling on that issue is the lack of any evidence that, at the times here in issue, suburban or upstate legislators, or indeed any State legislators, spontaneously decided to address New York City motor vehicle for-hire transportation. No State legislator claims that he or she awoke one day and said, "Oh my gosh, Bronx residents can't find wheelchair-accessible taxicabs to take them to Yonkers Raceway; we have to do something." The first record of any concern about the state of the City's taxi industry was from Mayor Bloomberg and Commissioner Yassky in January of 2011. The first record (or even claim) of any State interest or concern appears to have been generated by Commissioner Yassky's trip to Albany in May, 2011. Again, none of this is dispositive, put it serves to put the State's alleged substantial interest in context.

Inherent State Interests

The Courts have rejected many home rule challenges because of the State's strong, inherent interest in certain subject matters. Some such interests are enshrined in the State Constitution; Article XVI, § 1 declares that the State's taxing power "shall never be surrendered, suspended or contracted away." Hence, and predictably, taxation is always a substantial State concern. Thus we have City of New York v State of New York, 94 NY2d 577, 592 (2000), allowing the State, over a "home rule" challenge, to nullify the City's non-resident commuter tax. Defendants argue that the fact that the Metropolitan Transportation Authority, "a public benefit corporation [that] oversees transportation services for 12 counties," taxes a portion of City taxicab fares demonstrates a substantial State interest in City taxicab matters." Surely the State cannot, in effect, abolish City government by the simple expedient of taxing all City activity, and then claiming a substantial State interest in everything done here, and regulating same.

Constitution Article XIV is titled "Conservation," the goal of the enactment upheld in Wambat Realty Corp. v State of New York, 41 NY2d 490 (1977). Article XVIII is titled "Housing," affected by the Multiple

Dwelling Law upheld in Adler v Deegan, 251 NY 467 (1929). Article XI is titled "Education," and Article IX, § 3(a)(1) exempts from home rule challenge legislation regulating public schools; thus we have Board of Educ. v City of New York, 41 NY2d 535, 542 (1977). Article XVII is titled "Social Welfare, " and Section 3 thereof is titled "Public Health." Thus we have Town of Islip v Cuomo, 64 NY2d 50, 56-57 (1984), upholding State legislation to foster safe drinking water in Nassau, Suffolk, and parts of Queens Counties, and Robertson v Zimmerman, 268 NY 52 (1935), upholding State legislation to improve the sewers of Buffalo. In Kelley v McGee, 57 NY2d 522, 535 (1982), the Court recognized that the constitutional home rule provisions "evince a recognition that essentially local problems should be dealt with locally and that effective local self-government is the desired objective." "Health and safety" have long fallen under the State umbrella: "The protection of the public health and safety is one of the acknowledged purposes of the police power of the State." Adler v Deegan, 251 NY 467, 481 (1929). Health and safety are not comparable to taxicab availability. If everybody in New York City died tomorrow, we would have a catastrophe; if all housing in New York City disappeared tomorrow, we would have a disaster; if nobody could find a taxicab tomorrow, we would have a hardship.

The State also has a strong interest in statewide uniformity. Thus we have Patrolmen's Benevolent Assn. v City of New York, 97 NY2d 378 (2001) ("PBA II"), and Pero v City of Batavia, 99 AD2d 668 (4th Dept 1984), affd 63 NY2d 971 (1984).

A related interest is in matters that cross jurisdictional borders. Town of Islip, and Wambat addressed cross-border issues (drinking water and environmental conservation). Defendants note that HAIL licenses would allow people in, say, Northern Manhattan to street hail a legal, licensed vehicle to take them outside of the City, such as from the Northern Bronx to Southern Westchester. Indeed, for some time now the TLC has imposed a particular rate structure for medallioned taxicab trips to Nassau and Westchester Counties. Livery vehicles also carry passengers to train and bus terminals for trips outside the City. One for-hire driver states (Santiago 6/15/12 TSA Affid. ¶ 6) that she "regularly" takes pre-arranged rides (a street hail would be illegal) from northern Manhattan to Westchester and Rockland Counties and New Jersey or Connecticut (to similar effect are Garcia, ¶ 8 and Genere, ¶ 5, 6/15/12 TSA Affids.). As defendants note (Altamirano Affid. of 6/15/12, ¶ 26):

> By facilitating transportation between New York City and points outside of the City – both through direct trips out of the City and through connections to other forms of mass transportation – the [subject legislation] would benefit individuals and businesses outside of New York City.

The majestic Grand Central and (formerly majestic) Pennsylvania Stations, the termini for trips far and wide, are demonstrative evidence that State control over railway traffic makes sense. As plaintiffs argue, railways have long been subject to State regulation, are integrated into the "the State-level transportation infrastructure governed by [the Metropolitan Transportation Authority]," and "are owned by the government and operated as public transportation." Although it predates Cardozo's "substantial State interest" pronouncement in Adler, see McAneny v Board of Estimate and Apportionment, 232 NY 377, 393 (1922): "[r]apid transit for the city of New York has, for many years, been a matter of public interest, affecting not only the people of that city, but of the whole State. It has been generally regarded as a state affair." Furthermore, the 40-year "history of legislation on the subject shows it." The instant record contains little evidence of people taking for-hire vehicles in or out of the City; for the most part, the vehicles stay here.

The cross-border interest here is that some people might want to (a) leave the City, wholly or partially by taxicab; (b) street hail, rather than pre-arrange, the ride; and (c) be unable to find a suitable vehicle. However, while the record demonstrates some cross-border traffic (2% for livery vehicles; probably much less for medallioned taxicabs), it does not reveal a particular "concern" or reason for one, or that any such concern is of a "substantial" order of magnitude. When all is said and done, railways are a State concern, taxicabs are a local concern. If every cross-border transaction or out of town trip to the theater district created a substantial State interest, the borders might as well be abolished, and the State can just run everything. Occasional trips across the periphery of New York City cannot justify the State Legislature in driving a stake through the heart of home rule.

Lastly, defendants claim a strong interest in ensuring that our metropolis "retains its status as a worldwide center of commerce and tourism, which requires that persons who work in and visit central Manhattan, and those who arrive in the City via its airports, have ready access to safe and reliable taxi service." Amen. Somehow, New York City has managed to establish and maintain its exalted place in world commerce and tourism without State interference in the quantity or (for the most part) quality of its taxicabs. Defendants do not claim that New York City is losing its edge, or present any evidence that tourists and businesspeople are reluctant to come here because there is inadequate taxicab service. Thus, Albany's parentalism is ill-founded. On the other hand, if the State Legislature wanted to meddle in New York City government, the subject legislation fits the bill.

The contents of the subject legislation are all New York City "stuff." The new medallioned taxicabs and HAIL vehicles would be picking up passengers, and almost always dropping them off, in New York City. The Mayor, the TLC, the City Council, are all components of New York City government. The new medallions and licenses would be auctioned or sold by the City, for the City's financial benefit. The City is up to the task of regulating its own taxicabs.

Wheelchair-Accessibility Concerns

The ubiquitous wheelchair-accessibility provisions in the subject legislation surely are more than mere window dressing. They are undoubtedly well-intentioned, but severable from, indeed piggy-backed on, the issues of medallion supply and HAIL licenses. Moreover, the State interest in such could be enacted without scrambling New York City government. Also, the City was "first to take the field"; in passing the 2003 medallion increase, the City Council mandated that at least 9% of the new taxis be wheelchair-accessible. Admin. Code § 19-532(b). The 150 medallion increase in 2006 was pursuant to a "home rule" message requiring that they all be wheelchair-accessible. The TLC has also, long prior to the events here in issue, fostered wheelchair- and service animal-accessibility. See 35 RCNY §§ 59B-17(c), 54-20, 55-20. Thus, wheelchair-accessibility can be and has been addressed without State involvement, and the State's seemingly sudden interest in it has something of a "Johnny-come-lately" aspect.

The Enabling Legislation Exception

Defendants argue that the subject legislation is simply "enabling" legislation, which does not need a home rule message because it simply "enables," but does not require, the City to do something, citing Weber v New York, 18 Misc 2d 543, 546 (Sup Ct, New York County 1959), citing Salzman v Impellitteri, 350 NY 414 (1953). Now, that is all well and good, and makes perfect sense: why would a home rule message be necessary if the State is simply "enabling" a City to do something? However, here, the question is which component of City government has the power to act within a particular sphere, an issue absent from the

foregoing two cases. Manhattan Borough President Scott Stringer says that "the [subject] legislation does not require that New York City take any action whatsoever to change the taxi system." True again; but its cardinal sin is reallocating local power without a home rule message or a substantial State interest in doing so.

The "Reasonable Relationship" Issue

In City of New York v Patrolmen's Benevolent Assn., 89 NY2d 380, 390 (1996) ("PBA I"), the Court of Appeals stated that to pass home rule muster, a special law "must bear a reasonable relationship to the legitimate, accompanying substantial state concern." Accord, Patrolmen's Benevolent Assn. v City of New York, 97 NY 378, 389 (2001) ("PBA II") (the legislation must be "rationally related to [the State] concern"); City of New York v State of New York, 94 NY2d 577, 590 (2000). Indeed, a statute that "merely bears some relationship" runs afoul of home rule requirements. PBA I, 89 NY2d at 390-91. As Judge Cardozo, concurring in Adler, 251 NY at 490, put it, the State concern must be "directly and substantially involved."

Whether the subject legislation is "reasonably" or "rationally" related to an asserted State interest must be addressed in the context of New York's protective approach towards "home rule." NY Const, art IX, § 2(c)(ii)(1) provides that "every local government shall have power to adopt and amend local laws … relating to the … powers … of its officers." The subject legislation trammels that power. Grants of local autonomy, of the sort at issue here, abound in the statute books. For example, General Municipal Law ["GML"] § 181, originally acted in 1956, allows cities to regulate "the registration and licensing" of taxicabs and expressly authorizes cities to "limit the number of taxicabs to be licensed." Plaintiffs note (MTBOT Cplt ¶ 77) that in 1983 the New York Attorney General opined that GML 181 is "viewed as a home rule measure to give municipalities power they properly should have." 1983 NY Op. Atty. Gen. 1008. The Legislature saw the provisions as a "means to enable local governments to deal with the problem of an over supply of taxicabs that would both handicap drivers in their ability to make an adequate living and complicate control of vehicular traffic on streets already overburdened with too may cars." Id.

Plaintiffs plausibly argue (MTBOT Cplt ¶ 5) that the subject legislation "gives Assembly Members and State Senators from rural and suburban New York State more say over livery cabs in Queens than the Queens members of the New York City Council." How would an upstate legislator know whether the Manhattan Central Business District ends at 96th Street on the east side and 110th Street on the west side, or vice versa. But every New York City Council member probably would. On the other hand, City Council members from Staten Island probably would not have a clue about the contours of the central business district of Schenectady.

Defendants themselves emphasize that the Mayor is not obligated to issue medallions; so by that score, all the subject legislation really does is transfer power from the City's legislative to executive branch. Wambat Realty Corp. v State, 41 NY2d 490, 498 (1977), recognized a State interest in "strong, decentralized, local government in matters exclusively of local concern." If the State could oversee City taxicab policy, we would have centralized, top-down government in matters traditionally of local concern. New York City taxicabs are arguably engaged in interstate commerce. Does that mean that the United States Congress can mandate that all City taxicab drivers must eat broccoli three times a week to keep themselves healthy?

In this Court's view, "reasonable relationship" implies some proportionality between the means and the ends. PBA I, 89 NY2d at 391, quoting Judge Cardozo in Adler, 251 NY at 486, warned against "intrusion[s] upon a concern or interest of the city without a compensating offset in the advancement of a concern or

interest of the [S]tate." Here, the intrusion (reallocating the powers of City government) is a mountain; the State's asserted interest (regulating City taxicab service) is a molehill. Moreover, the means adopted are like cracking an egg with a sledgehammer. To take the full measure of the subject legislation, you have to read it all (suggestion: start early in the day). The statute consists of 14, single-spaced pages of legalese micro-managing the provision of taxicab service in New York City. A not atypical sentence (the entirety of Section 10(b)) is as follows:

> The disabled accessibility plan either shall contain a recommendation for the percentage of HAIL licenses issued in the second and third issuances to be restricted to accessible vehicles, or if no recommendation is made, the required percentage of HAIL licenses restricted to accessible vehicles set forth for the first issuance shall remain in effect for the second and third issuances, and the TLC shall continue to require that for every block of one thousand HAIL licenses issued, the twenty percent requirement provided in subdivision (b) of section five of this act must be met prior to the issuance of any additional HAIL licenses.

Wouldn't it just be easier to mandate that a certain percentage of <u>all</u> taxicabs in <u>all</u> cities (not just New York) be wheelchair-accessible, and let each locality go about deciding how to achieve that worthy goal?

The detail includes dictating the precise distance that a rogue driver must travel before he or she will be deemed to have attempted to escape the clutches of a taxicab enforcement officer (if you guessed anything other than 300 feet, you guessed incorrectly). Isn't this something that New York City can determine without the State interference? Does State government have a "substantial interest" in setting this distance at exactly 300 feet?

Defendants argue as follows:

> if the [subject legislation] had simply directed the TLC to issue exactly 2,000 medallions, plaintiffs would not be complaining that the law reapportioned power within city government. But because the law allows the Mayor to determine that *fewer* than 2,000 medallions will be issued – an option one would think plaintiffs might welcome – suddenly, according to plaintiffs, the law reallocates power within city government.

But that is exactly what the law does. If the State had, or even thought it had, a substantial interest in more medallions it could have dictated that they be issued. Plaintiffs might still have challenged the law on home rule grounds, but then it would only be a law about the number of medallions. Instead, the subject legislation says to the Mayor, "you decide." Until now, the City Council had been "the decider." To allow the Mayor, suddenly, after all these years, to decide whether to issue new medallions, and, if so, how many, is the embodiment of reallocating power, and runs roughshod over what had heretofore been the Council's prerogative.

Finally, this Court agrees with plaintiffs that the subject legislation purloins the power of the purse. Defendants claim that the subject legislation does not "authorize [the fine-collecting] agencies to spend the funds they collect, a matter that remains governed by other sources of State or local law." Plaintiffs claim that the subject legislation "gives executive branch enforcement agencies carte blanche to keep and use as they see fit any funds they collect enforcing [the subject legislation], removing forever from the City Council its budget oversight authority over such funds." The subject legislation appears to be mute on this

point.

In any event, economic self-determination is essential to any rational form of government. (Cf. "Taxation without representation is tyranny.") NY Const art IX, §§ 2(c)(3) and (4), guaranty to the City the right to "transac[t] its business" and "incu[r] its obligations." The City Charter, Chapter 10, requires the City Council to approve all expenditures. The subject legislation exposes the City to as much as $54,000,000 in grants (albeit for the laudable goal of wheelchair-accessibility). Breaking open the City's piggy bank is a slippery slope. The subject legislation also, as plaintiffs argue, creates a "bounty system" whereby "law enforcement agencies at both the state and local level [can] fund themselves off-budget." This deprives the City Council of its right to earmark funds for these agencies, and, at least at first blush, appears to allow them unfettered discretion as to how to spend the subject funds. As Judge Cardozo wrote in Adler, 251 NY at 489, "[t]here are some affairs intimately connected with the exercise by the city of its corporate functions, which are city affairs only. * * * Most important of all perhaps is the control of the locality over payments from the local purse."

Home Rule Conclusion

In the final analysis, the subject legislation violates the "home rule" provisions of the State Constitution for two independent reasons: (1) as a matter of history and common sense, New York City taxicab service is not a matter of substantial State interest or concern (and to deem it otherwise would largely eviscerate the concept of "home rule"); and (2) a law that shifts power from the City's legislative branch to its executive branch, and micro-manages the exercise of that power, fails to bear a reasonable relationship to any such interest or concern. As plaintiffs argue, "[l]ocal Governance – protected by the … Home Rule Article – means nothing if not the power to determine the precise functions and powers that will be wielded by coordinate branches of government." Indeed, one can imagine a scenario in which a series of "throw the bums out" election results could trigger helter-skelter State legislation pinballing power back and forth between whichever branch of City government the State agreed with or wanted to favor at any particular time.

As eloquently stated by counsel for Public Advocate de Blasio (first in the line of succession to the Mayor):

> the demarcations of governmental authority in the Charter are the product of years of careful planning informed by experts, as well as the result of local input. Through the [subject legislation], the state legislature has redrawn the line between what is executive and what is legislative in the city, with none of the hearings, planning, or local expertise that underpins the Charter's allocation and balance of power. There is no state concern in dictating that *the Mayor* should choose the number of new medallions instead of the City Council. There is no state interest in upsetting the constitutional balance of power that the Charter has established between its legislative and executive branches.

Outside forces should not be allowed to tinker with a system so delicately balanced.

The "Double Enactment" Issue

NY Const, art IX, § 2(b)(1) provides that the State legislature

> [s]hall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article.

Pursuant thereto, the Legislature passed the Statute of Local Governments that, in § 10(1), grants cities the "power to adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of its functions, powers and duties." Furthermore, the Municipal Home Rule Law, art 2, § 10(1), provides that, "[i]n addition to powers granted in the constitution, the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government."

The constitutional provision cited above further declares that

> A power granted in [the Statute of Local Governments] may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

This so-called "double enactment" clause is intended to "afford localities protection from hasty and ill-considered legislative judgments." Wambat Realty Corp. v State of New York, 41 NY2d 490, 491-92 (1977). Defendants point out that Wambat held that the Legislature was not required to comply with the "double enactment" clause if the legislation serves a substantial State interest: "the powers granted under the Statute of Local Governments may … be encroached upon or even superseded by ordinary legislative enactment where matters of State concern are involved." 41 NY2d at 491. If defendants are correct that a substantial State interest supports the subject legislation, then the "double enactment" clause is not at issue here. If plaintiffs are correct that a substantial State interest does not support the subject legislation, then the subject legislation violates the "double enactment" clause, because it repeals, diminishes, and/or impairs powers granted in the Statute of Local Governments but declares itself to take effect immediately, without a "double enactment."

The subject legislation arguably repeals, and certainly diminishes and/or impairs, City Charter § 2303(b)(4) (enacted pursuant to New York Statute of Local Governments § 10(1)), and, in §§ 25-29, the subject legislation expressly repeals and/or amends New York City Administrative Code Article 19, §§ 506, 507, 512.1, and 516. As stated in Floyd v New York State Urban Dev. Corp., 23 NY2d 1, (1973), the "double enactment" clause applies if "a special act, disruptive of the powers of a particular municipality, is involved." That is just what we have here.

The "Exclusive Privileges" Issue

NY Const, art 3, § 17 provides that the "legislature shall not pass a private or local bill … granting to any private corporation, association or individual any exclusive privilege … or franchise whatsoever." According to Commissioner Yassky (5/7/12 Affid ¶ 26), approximately 60,000 livery licensees are eligible to apply for HAIL licenses. He acknowledges that once issued, the owner may transfer a HAIL license to anyone with a livery license, whether or not licensed for at least a year. This undercuts defendants' argument that the restriction on initial issuances to livery license holders is a "reasonable licensing criteri[on]," rather than special interest legislation. What is reasonable about allowing a windfall, at

taxpayer expense, to a particular group?

On average, HAIL licenses will cost only a fraction of 1% of any newly-issued wheelchair-accessible taxicab medallions: between $1,500 and $4,500 (indeed, as low as $500 a year for those first issued), versus $850,000 (Brennan 5/30/12 TSA Affirm. ¶ 13), the minimum bid price for one of the 2,000 potential new medallions. Currently, unrestricted medallions fetch as much as a million dollars or more.

The $15,000 wheelchair-accessibility grants are also an "exclusive privilege," as they are unavailable to taxicab medallion owners seeking to purchase or retrofit a wheelchair-accessible vehicle, again furthering the impression of "special interest" legislation. Defendants seem to acknowledge that the subject legislation requires the City to subsidize accessible vehicles. However, they argue, doing so "furthers the goal of increasing accessibility." True enough, but that does not negate the nature of this unfunded mandate.

Defendants argue that the "exclusive privileges" clause is aimed at monopolies, Matter of Union Ferry Co. of Brooklyn, 98 NY 139, 150 (1885), which the subject legislation does not create. Nevertheless, the basic unfairness of bestowing rewards on one entity or group is evident. The HAIL license giveaway is also anti-competitive.

Finally, defendants argue that restricting the initial issuance of HAIL licenses to current livery drivers will "expedite … issuance … to a large class of individuals that have already been vetted." But what good does that do, when they can turn around the next day and reap a huge profit by selling the license to someone not vetted by the TLC?

Although literal monopolies appear to be the central iniquity at which the "exclusive privileges" clause is aimed, under it, statutes bestowing special favors on groups have also been declared unconstitutional. E.g., 19th Street Assoc. v State of New York, 172 AD2d 380 (1st Dept 1990) (legislation benefitting tenants of a particular apartment building), affd on other grounds 79 NY2d 434 (1992); Fox v Mohawk & Hudson River Humane Socy., 165 NY 517, 526 (1901) (legislation benefitting various humane societies).

Especially considering all the political machinations that occasioned the subject legislation, this bonanza to a limited but politically potent group has, to quote 19th St. Assoc. v State of New York, 79 NY2d at 444, "all the indicia of special interests litigation."

The fact that the livery-driver-turned-HAIL-licensee can turn around and sell the license, at whatever price the market will bear, to a new entrant in the field, does not negate that the right to purchase the license at a rock-bottom price is an "exclusive privilege." Defendants argue that "the [subject legislation] does not convey an *exclusive* privilege because the right to accept street hails in the outer boroughs *is already held by taxi medallion owners*." That misses the point. The "exclusive privilege" is the right to purchase, at a bargain-basement price, a HAIL license, which the livery drivers, to the exclusion of everybody else, would receive.

The "Delegation of Powers" Issue

Article III of the State Constitution vests the State's legislative power in the State Legislature. Case law has long circumscribed the Legislature's ability to delegate this power to any other entity, including administrative agencies. What apparently exercises plaintiffs most is that Section 23 of the subject

legislation allows certain law enforcement agencies to collect "bounties" without any budgetary oversight. However, as defendants note, although the Legislature may not delegate "lawmaking authority" to an administrative agency, "there is no constitutional prohibition against the delegation of power, with reasonable safeguards and standards, to an agency or commission to administer the law as enacted by the legislature." Boreali v Axelrod, 71 NY2d 1, 9 (1987). Delegation is permissible if "the basic policy decisions underlying the regulations have been made and articulated by the legislature." Bourquin v Cuomo, 85 NY2d 781, 785 (1995) (citations omitted). This Court finds that the "bounty system" of which plaintiffs complain, while it may be impermissible for reasons discussed above, is not an improper delegation of power because it does not give the subject agencies the right to make "basic policy decisions." In any event, defendants claim, and plaintiffs do not seem to controvert, that plaintiffs have abandon this argument.

The "Takings" Issue

The "takings" clause of the Fifth Amendment to the United States Constitution and Article I, Section 7 of the State Constitution both prohibit the taking of private property for public use without just compensation. Plaintiffs argue that issuing 2,000 additional medallions and 18,000 HAIL licenses would so diminish the value of current medallions as to constitute a "taking." This argument is unavailing, for overlapping procedural and substantive reasons.

Procedural Reasons

"Takings" claims appear to be divisible into "facial" and "as applied" (what might be called "before the fact" and "after the fact"). This Court agrees with defendants that

> facial takings claims require a calamitous economic impact on the regulated industry, because the remedy is invalidation of the challenged statue on its face. The only ripe question before this Court is whether the "mere enactment" of [the subject legislation] constitutes a regulatory taking and, in that regard, plaintiffs bear the "heavy burden of overcoming the presumption of constitutionality that attaches to the [challenged statute] and proving every element of [their regulatory takings] claim beyond a reasonable doubt." De St. Aubin v. Flacke, 68 N.Y.2d 66, 76 (1986). Plaintiffs clearly cannot meet that burden as a matter of law.

A facial takings challenge is an "uphill battle" because "it is difficult to demonstrate that the mere enactment of a piece of legislation deprived the owner of economically viable use of his property." Suitum v Tahoe Regional Planning Agency, 520 US 725, 736 n 10 (1997).

Defendants are also correct that plaintiffs' "as-applied" takings claim is premature, as no medallions or HAIL licenses have been issued, and that "the remedy for a taking is compensation." "Equitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking." Ruckelshaus v Monsanto Co., 467 US 986, 1016 (1984).

Substantive Reasons

Nature of the Governmental Action

Turning from procedure to substance, as an initial matter, a taking "may more readily be found when the

interference with property can be characterized as a physical invasion by government, [] than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." Penn Cent. Transp. Co. v New York City, 438 US 104, 124 (1978). The subject legislation does not "take" property and does not allow a "physical invasion" of property. Indeed, it does not address real or personal property at all. Rather, it allows for the disbursement of rights that heretofore have been the exclusive province of plaintiffs. Thus, plaintiffs are losing only the "exclusivity" (if a club with 13,237 members can be considered exclusive) of their rights. Note that the subject legislation does not prohibit medallioned taxicabs from cruising for street hails outside of the MCBD+A.

Plaintiffs understandably cite to Kaiser Aetna v United States, 444 US 164, 176 (1979), in which the Court held that opening a privately restricted pond to public use constituted a "taking." The streets of Midtown Manhattan are hardly a private pond and allowing increased competition thereon is hardly invasive.

In allowing 2,000 more medallions, whose new owners mostly will compete with plaintiff drivers in the MCBD+A, and 18,000 HAIL licenses, whose owners are only authorized to cruise for hails in areas that plaintiff drivers largely shun, the subject legislation does not so much "take" plaintiffs' property rights as "dilute" them. Each plaintiff driver already competes with 13,236 other drivers, 95% (a figure on which the parties seem to agree) of the time in areas from which the HAIL drivers would be excluded.

Plaintiffs claim (TSA Cplt ¶ 88) that medallions are "more than mere licenses. Because they create consistent streams of income, have lasting residual value, and are freely transferable, they have long been understood to be valuable property." Let us assume that this is so. They are still "intangible" property. Plaintiffs intangible rights are not being "taken," they are being shared.

Plaintiffs cite Seawall Assoc. v City of New York, 74 NY2d 92, 109-110 (1989); accord Manocherian v Lenox Hill Hospital, 84 NY2d 385, 398 (1994), mod 229 AD2d 197, 206 (1st Dept 1997), for the proposition that the abrogation of even one right amongst a bundle of rights, "considered alone" and "without regard to its comparative value in relation to the whole," constitutes a "taking." Of course, the "right" at issue here is the right to pick up street hails exclusively. However, as just noted, this Court simply does not view the 2000 additional medallions and the 18,000 HAIL licenses, prohibited from picking up street hails in the MCBD+A, as a removal of a right, just a sharing of the right with a larger pool of drivers.

Plaintiffs also rely on Armstrong v United States, 364 US 40, 49 (1960): the takings clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Everyone agrees that only midtown Manhattan has anything approaching adequate legal taxicab service, and no one disputes that 95% of medallioned street hails originate there. Allowing somewhat more medallioned taxicabs to cruise midtown Manhattan and the airports, and allowing legal street hails where few now exist, does not violate this Court's sense of "fairness and justice."

The Degree of Any Drop in Value

The cases are legion that, to be actionable, a "taking" must engender more than just a mere diminution in value. Even a drop in value of 54%, the high end of plaintiffs' expert's opinion (Miller TSA Affid. 5/16/12 ¶ 9), would not qualify. E.g., Hadacheck v Sebastian, 239 US 394, 405-510 (1915) (90% diminution insufficient); Keystone Bituminous Coal Assn. v De Benedictis, 480 US 470, 494-95 (1987) (rejecting facial takings claim, as property owners could continue to engage profitably in the business in which they

invested). Plaintiffs note that in Armstrong v United States, 364 US 40, 58 (1960), the Court said that the government's "destroy[ing] the value" of an interest in property constitutes a "taking." Even plaintiffs' experts do not claim that the subject legislation will come close to "destroying" the heretofore resilient value of New York City taxicab medallions. Indeed, as of this writing, the subject legislation has not, apparently, caused a significant, much less a precipitous, drop in medallion values (although that may in part be due to the instant litigation).

This Court recognizes that medallion values may decrease, at least for a while, and is not cavalier about the economic hardships that plaintiffs may bear. However, none of the worst-case scenarios of plaintiffs' experts (never mind defendants' experts) analyzing the HAIL license program, which would operate largely in a different market from medallioned taxicabs, and the significant but hardly disproportionate increase in medallions, operating in one of the busiest business districts in the world, will so devalue plaintiffs' businesses as to create a "takings" claim.

Estoppel

Finally, plaintiffs rely on, among similar documents, "N.Y.C. Taxi & Limousine Comm'n, 2004 N.Y.C. MEDALLION SALE INFORMATION KIT, Frequently Asked Questions, at 2" (TSA Cplt Exh. C): "Purchasing a medallion gives you … the sole right to accept street hails on the streets of New York City." This reliance on what is in effect an "estoppel" argument is unavailing for several reasons. For one, that same information packet, under "Risks Associated with Medallion Ownership," warns that "[l]egislative and regulatory changes can affect taxicab medallion owners by … opening the demand-responsive transportation market to new forms of competition." Furthermore, as defendants argue, "[p]laintiffs cite no representation by the City that this aspect of the law would never change." Moreover, at least as of now, every purchaser of a medallion has to sign an "Affidavit of Non-Reliance" (Brennan TSA Affirm 5/16/12 ¶ 3), stating that the purchaser "has not relied on any statement or representation of the TLC … including … regarding the value of taxicab medallions." Finally, the HAIL licenses can be seen as just another form of "medallion." In any event, "[a]bsent an unusual factual situation, 'estoppel is unavailable against a governmental agency engaging in the exercise of its governmental functions.'" Advanced Refractory Techs., Inc. v Power Auth., 81 NY2d 670, 677 (1993) (citations omitted).

"Takings" Conclusion

In sum, plaintiffs' "takings" claim falls short because there would be little or no "facial" taking; because, even using plaintiffs' projections, any such taking, while more than de minimis, would be less than what courts find actionable; and because plaintiffs' "as applied" takings claim is premature.

The "Environmental Review" Issue

All parties agree that the City would have to comply with the State and City Environmental Quality Review Acts ("SEQRA" and "CEQRA," respectively) in issuing any new medallions. Plaintiffs claim that the issuance of any HAIL licenses would also require compliance. This Court strongly disagrees. The State had the authority to exempt the issuance of the HAIL licenses from State-mandated SEQRA review and, as defendants argue, notwithstanding plaintiffs' gyrations, the State did just that. The "no review" clauses in Sections 4 and 5 most likely preclude environmental review, because no other review would be necessary. Also, again as defendants argue, use of the word "review," rather than some standard language like "any other provision of law to the contrary notwithstanding," points straight at "environmental review"; "any" means any, and "review" is part of the very title of SEQRA and CEQRA. The subject legislation is hardly

the first to exempt government activity from SEQRA review. See e.g. Settco, LLC v New York State Urban Dev. Corp., 305 AD2d 1026, 1026-27 (4th Dept 2003).

In any event, the TLC, the "lead agency," is (Mastro TSA 5/16/12 Affirm. Exh. B) currently reviewing the environmental impacts of the subject legislation. Plaintiffs claim (Gerrard TSA 5/16/12 Affid. ¶¶ 12-14) that the current review is taking place all too fast. However, this Court agrees with defendants:

> Nothing in TLC's stated timeline precludes [TLC's] completion of [a proper review]. If, once TLC completes the environmental review of the 2,000 medallions, plaintiffs believe it is insufficient, they will be able to challenge it at that time. Litigation is only appropriate after the issuance of a final [Environmental Impact Statement]. Sour Mt. Realty Inc. v. New York State Dept. of Envtl. Conservation, 260 AD2d 920, 921 (3d Dept 1999).

Although finding for defendants on the "environmental review" issue, because, for all that appears, they are doing what the law requires, this Court wishes to register its strong disagreement with defendants' position that the subject legislation does not affect plaintiffs, environmentally speaking, any more than the public at large. Anyone who has ever driven a taxicab in the MCBD+A knows the immediate, dramatic effects of increased traffic congestion and air pollution on "the bottom line" and on the quality of life, respectively. See In re Commn. To Preserve Brighton Beach and Manhattan Beach v Planning Commn. of City of New York., 259 AD2d 26, 32 (1st Dept 1999) (holding that "noise and traffic" problems and "contaminants to be released into the air" are the "aesthetic or quality of life type of injuries [that] have consistently been recognized by courts as a basis for standing" under SEQRA).

Conclusion

Thus, for the reasons set forth herein, and pursuant to CPLR 3001 and 3212, this Court declares [1] that Chapter 602 of the Laws of New York of 2011, as amended by Chapter 9 of the Laws of 2012, violates New York State Constitution Article IX, § 2(b)(2) (the "Home Rule Clause"), Article IX, § 2(b)(1) (the "Double Enactment Clause"), and Article III, § 17 (the "Exclusive Privileges Clause"); [2] that pursuant to Section 6 of said legislation, the entire act is null and void; [3] that said legislation does not violate the Fifth Amendment to the United States Constitution or Article I, § 7 of the New York State Constitution (the "Takings Clauses"); [4] that said legislation does not violate Article III (prohibiting improper delegations of legislative power) of the New York State Constitution; [5] that the City of New York would not be obligated to perform a review, pursuant to the State or City Environmental Quality Review Acts, of any issuances of "HAIL" licenses pursuant to the subject legislatin; and [6] that to date, defendant The City of New York has not violated either of said statutes. Plaintiffs' requests for reasonable attorney's fees is denied without prejudice to being made upon a set of proper papers, including any justifications therefor. Plaintiffs' requests for injunctive relief are denied without prejudice as unnecessary at this time. Any outstanding bond is hereby discharged and should be returned.

Dated: 8/17/12

Arthur F. Engoron, J.C.C.