

# 3116

Pennsylvania Taxi Association  
2301 Church St.  
Philadelphia, PA 19124

October 23, 2015

Independent Regulatory Review Commission  
333 Market St., 14<sup>th</sup> Floor  
Harrisburg, PA 17101

2015 OCT 23 PM 3: 57

RECEIVED  
IRRC

Re: Proposed Regulation No. 126-12

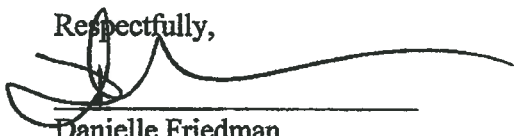
Dear Members of the Commission:

If you are not already aware, there is ongoing litigation in Pennsylvania's Commonwealth Court regarding the Authority's safety camera regulations in the case Black Point Taxi, LLC et al. v. Philadelphia Parking Authority (Docket No. 76 M.D. 2015). The Petitioners in that case argue that the Authority's safety camera regulations are unconstitutional and that the regulations are impossible to comply with because no Authority-approved vendor is capable or willing to install the required safety camera systems in Philadelphia's 1,600 taxicabs.

Judge Rochelle Friedman, who is presiding in this case, has determined "[P]etitioners will be harmed because they are required to purchase a safety camera system from Authority-approved vendors, which Petitioners have alleged are unwilling or unable to provide a system that complies with the Regulation. Whether a compliant safety camera system exists can be resolved only through discovery and the development of a full record. Moreover, the Regulation is not applied across the board because limousines are excluded, as other car services." Judge Friedman's entire Memorandum is enclosed herewith for your review.

For the foregoing reasons and for the reasons set forth in Judge Friedman's Memorandum, we believe that the safety camera regulation must be amended to include all transportation providers and the Authority's technical specifications should be simplified to allow cameras to be reasonably priced and easily implemented. In the alternative, the Authority should repeal the safety camera regulation in its entirety. Drivers and passengers are already adequately protected by partitions in each taxicab. It has recently come to light that the Authority's technical specifications for the cameras have made the cameras unaffordable and it is overly burdensome for the taxicab industry to comply with the regulations. Unless the regulations and specifications are modified to include all industry members and the camera requirements are simplified so that the cameras are easily implemented and affordable, the safety camera regulation should be repealed.

Respectfully,



Danielle Friedman

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Black Point Taxi, LLC, Gabon Taxi, LLC, :  
Lindros Taxi, LLC, Congo Taxi, LLC, : No. 76 M.D. 2015  
Botswana Taxi, LLC, Australia Taxi, LLC, : Argued: June 2, 2015  
Kolara Trans, LLC, Iverson Taxi, LLC, :  
Morocco Taxi, LLC, Sudan Taxi, LLC, Kick :  
Stand Trans, LLC, Two Phones Taxi, LLC, :  
Toba Taxi, LLC, Senegal Taxi, LLC, Seedjam, :  
Inc., Brasil Taxi, LLC, Narragansett Taxi, :  
LLC, H-OP-KJVAI Cab Co., Ryder Cup Taxi, :  
LLC, Eurostar Taxi, LLC, Togo Taxi, LLC, :  
Barnes Taxi, LLC, Malhaffey Taxi LLC, Melo :  
Taxi, LLC, Egypt Taxi, LLC, Housewives :  
Taxi, LLC, Ethiopia Taxi, LLC, Schmidt Taxi :  
LLC, Cambodia Taxi, LLC, RZA Cab Corp., :  
Kingston Taxi, LLC, Fromage Taxi, LLC, :  
Watson Taxi, LLC, New Zealand Taxi, LLC, :  
Pier Taxi, LLC, Kenya Taxi, LLC, Vick Taxi, :  
LLC, Gold Runner Taxi, LLC, Korea Taxi, :  
LLC, Sri Lanka Taxi, LLC, Barkley Taxi, :  
LLC, Zimbabwe Taxi, LLC, Mykonos Taxi, :  
LLC, Sephardic Taxi, LLC, Adam & Neima, :  
Inc., Afroso, Inc., Amalia Taxi, LLC, Apollo :  
Taxi, LLC, Arielle Taxi, LLC, Armada Taxi, :  
LLC, Athena Taxi, LLC, BE & G Taxi Cab Co., :  
Benjamin Taxi, LLC, Brother Taxi, LLC, :  
Capital Taxi, LLC, Chernou Cab Co., :  
Crossroad Cap Corp., D & W Cab Company, :  
Devi Cab Co., Drama Taxi, LLC, Bffy Taxi, :  
LLC, EZ Trans, LLC, F & G Taxi Cab Co., Inc., :  
Fresh Prince Taxi, LLC, G & V Cab, Gotry Cab :  
Co., Gustavia Taxi, LLC, Halloween Taxi, LLC, :  
Holiday Taxi, LLC, Igal Taxi, LLC, Joelle :  
Taxi, LLC, JS Gabrielle Corp., Kareen Taxi, :  
LLC, Karma Taxi, LLC, King of Russia Taxi, :  
LLC, Klarida Trans, Inc., Komboya Trans., :  
Inc., Laos Taxi, LLC, Lirr, Inc., Little :  
Angels Cab Corp., Lucky Man Cab Co., :  
Lydor Taxi, LLC, Mahaffey Taxi LLC, :  
Mahil Cab Co., Malaysia Taxi, LLC, Nepal :  
Taxi, LLC, Olive Tree Management, LLC, :

2015 OCT 23 PM 3:57

RECEIVED  
IRRC

Paula Taxi, LLC, Pierre Cab Co., Rika Taxi,  
LLC, RJZ Cab Co., S & B Cab Co., Saint  
Barts Taxi, LLC, Saint Cab Co., Saint Jean  
Taxi, LLC, Saint Pierre Enterprises, Inc.,  
Sunny Taxi, LLC, Tam Cab Co., Veronique  
Taxi, LLC, Vietman Taxi, LLC, VPR Cab Co.,  
Wil & Done Cab Co., and Freedom Taxi  
Association, LLC,

Petitioners,

v.

Philadelphia Parking Authority,

Respondent

### MEMORANDUM

Black Point Taxi, LLC, et. al. (Petitioners) filed a petition for review in this court's original jurisdiction challenging as unconstitutional the regulation promulgated at 52 Pa. Code §1017.71-77 (Regulation), which requires all taxicabs to be equipped with a safety camera system that records data from the inside of the taxicab by August 15, 2015.<sup>1</sup> The Philadelphia Parking Authority (Authority) filed an answer thereto and subsequently filed a motion for judgment on the pleadings. Before hearing argument on the motion, this court considered Petitioners' application for a status conference. On June 3, 2015, this court issued an order denying the Authority's motion for judgment on the pleadings. This memorandum is issued in support thereof.

---

<sup>1</sup> Originally, the Regulation was to take effect on February 23, 2015. However, the Philadelphia Parking Authority later extended the deadline to August 15, 2015.

Petitioners are owners of taxicab medallions<sup>2</sup> in Philadelphia and holders of certificates of public convenience issued by the Authority. (Pet. for Review, ¶ 6.) The Authority regulates all aspects of taxicabs and limousines in the City of Philadelphia pursuant to the Parking Authority Law (Law), 53 Pa. C.S. §§5701-5745. (Pet. for Review, ¶¶ 7-8, 10.) In accordance with 53 Pa. C.S. §5714(b), “[e]ach vehicle authorized to provide taxicab service shall be equipped with such security devices as the [A]uthority may, in its discretion, require by order or regulation.”

The Regulation at issue requires the installation of a safety camera system, which “must be in operation during the entire time the vehicle’s engine is running and for not less than 1 hour after the engine is turned off.” 52 Pa. Code §1017.74(c). Further, “[t]he safety camera system must be able to record data including: . . . [t]he full face of the driver and all occupants seated in passenger seats and facing forward.” 52 Pa. Code §1017.74(f)(1). In addition, “[t]he safety camera system must record and store images in a unit separate from any camera.” 52 Pa. Code §1017.74(g). If a driver presses the distress button, a feature already required by prior legislation, the safety camera system will immediately transmit all images to the taxicab’s dispatcher and the Authority. 52 Pa. Code §1017.74(h). The Authority is authorized to remove Petitioners from service for not complying with the Regulation. (Pet. for Review, ¶34.)

Although the Authority initially approved three vendors to provide and install the safety camera systems, two of the vendors have notified Petitioners that

---

<sup>2</sup> Freedom Taxi Association, LLC is not a medallion owner but is an authorized taxicab dispatcher.

they are unable or unwilling to provide the safety camera system. The third vendor, LINK Communications, Ltd., is not a well-known company and has not demonstrated that it has experience installing safety camera systems. (*Id.*, ¶¶ 36-40.)

On October 29, 2014, the Authority proposed 52 Pa. Code §1017.78, a regulation that addresses the retention and use of images generated by the safety camera system (Retention Regulation). The Retention Regulation states *inter alia* that: images may not be released except as permitted by the Retention Regulation; images must be overwritten every 60 days; and all images stored by the Authority must be password-protected. Petitioners allege that the Retention Regulation, if enacted, does not provide for specific security measures that would prevent unauthorized individuals from accessing, copying, or misappropriating live video feeds and captured images. (*Id.*, ¶¶ 24-26.)

On January 26, 2015, Petitioners filed a petition with the Authority seeking an emergency order repealing the Regulation. Petitioners maintain that the Authority has not addressed the petition. (*Id.*, ¶¶ 4, 29.)

Thereafter, Petitioners filed a petition for review in this court's original jurisdiction seeking to have the Regulation declared unconstitutional. First, Petitioners allege that requiring cameras in the taxicabs violates the fundamental constitutional right of intimate association, i.e., the right to enter into and maintain a private relationship, enjoyed by taxicab drivers and their passengers. (*Id.*, ¶¶ 49-65.) Second, the Regulation violates Petitioners' and their passengers' rights to privacy under the United States and Pennsylvania Constitutions. (*Id.*, ¶¶ 66-80.) Third, the

Regulation deprives medallion owners of property rights without due process of law and, thus, violates procedural and substantive due process. (*Id.*, ¶¶ 81-90.)

The Authority filed an answer denying that the Regulation requires live video feed. (Answer, ¶ 19.) The Authority anticipates that images retained by the safety camera systems will be used for law enforcement and regulatory purposes. (*Id.*, ¶ 23.) The Authority further maintains that approved vendors can provide the safety camera systems. (*Id.*, ¶ 38.)

The Authority then filed a motion for judgment on the pleadings, alleging that the case does not implicate any legitimate constitutional issues. “A motion for judgment on the pleadings filed in an action in this [c]ourt’s original jurisdiction is in the nature of a demurrer.” *Pennsylvania Social Services Union, Local 688 of the Service Employees International Union v. Commonwealth*, 59 A.3d 1136, 1142 (Pa. Cmwlth. 2012). All of the opposing party’s allegations are viewed as true, and only those allegations that are specifically admitted may be considered against that party. *Kaiser v. Western States Administrators*, 702 A.2d 609, 612 n.1 (Pa. Cmwlth. 1997). “A motion for judgment on the pleadings may be granted only when there is no genuine issue of fact, and the moving party is entitled to judgment as a matter of law.” *Pennsylvania Social Services Union*, 59 A.3d at 1142.

In its motion for judgment on the pleadings, the Authority claims that Petitioners do not have a constitutionally protected right of intimate association. The right of intimate association only adheres to the most highly personal human bonds that reflect a person’s identity, such as those shared by family. *Roberts v. United*

*States Jaycees*, 468 U.S. 609, 618-19 (1984). Other attributes include “relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship.” *Id.* at 620. Here, the Authority argues that an intimate association, which involves a special community of thoughts, experiences, and beliefs or a sharing of distinctly personal aspects of lives, does not exist between taxicab drivers and their passengers. The Authority argues that the relationship here is commercial.

In their petition for review, Petitioners claim that “[t]he right of intimate association involves an individual’s right to enter into and maintain intimate or private relationships free of state intrusion.” *Pi Lambda Phi Fraternity, Inc. v. University of Pittsburgh*, 229 F.3d 435, 441 (3d Cir. 2000). The Regulation violates the freedom of intimate association because it allows the government to freely watch and record Petitioners and their passengers.

Petitioners further allege that the Regulation violates a fundamental right and is subject to strict scrutiny. To pass the strict scrutiny test, the Regulation must “(1) serve a compelling governmental interest; (2) be narrowly tailored to achieve that interest; and (3) be the least restrictive means of advancing that interest.” *American Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 251 (3d Cir. 2003), *aff’d*, 542 U.S. 656 (2004). Petitioners allege that the Regulation is not narrowly tailored to promote public safety because there is no evidence that installing cameras will protect drivers or passengers. Further, the Regulation is not the least restrictive means of safeguarding drivers and passengers. The regulations currently require a protective shield that separates the front seat from the back seat. There is no

suggestion that the protective shield currently used in taxicabs is ineffective to protect drivers and passengers.

The Authority next claims that the Regulation does not violate Petitioners' right to privacy under the United States and Pennsylvania Constitutions.

The Authority argues that in *Goodwin v. Moyer*, 549 F. Supp. 2d 621, 633 (M.D. Pa. 2006), the court held that a video camera on a school bus was an insignificant intrusion on the bus driver's privacy. The driver was in a public area and in view of the public through the windows. *Id.* The video captured the driver taking children to and from school; and it did not capture the driver engaged in private acts. *Id.* Similarly, taxicab drivers and their passengers are conducting business in public view, so there is no reasonable expectation of privacy.

In *Alexandre v. New York City Taxi & Limousine Commission*, 2007 U.S. Dist. LEXIS 73642 (S.D.N.Y. Sept. 28, 2007), the court rejected a similar challenge to enjoin New York's regulations requiring global positioning systems in taxicabs. The court stated that in the taxicab context presented to the court, "there is likely 'no legitimate expectation of privacy,' there is also 'no search or seizure within the ambit of the Fourth Amendment.'" *Id.* at 32. Even if they enjoyed any privacy rights, any burden imposed by the regulations was outweighed by New York's interests, which included protecting the safety of drivers and passengers. *Id.* at 33-34.

In *Dennis Melancon, Inc. v. City of New Orleans*, 889 F. Supp. 2d 808, 829-30 (E.D. La.), *aff'd in part and vacated in part on other grounds*, 703 F.3d 262



(5th Cir. 2012), the court held that New Orleans' requirement that taxicabs be equipped with safety cameras does not infringe on any constitutionally protected privacy interest. The Authority maintains that the Regulation does not implicate any legitimate privacy interest and, thus, does not create any "search or seizure." Even if it did, the Authority's interest in public safety would far outweigh any incidental intrusion.

Petitioners maintain that the Regulation violates the privacy rights of taxicab drivers and their passengers. When considering the reasonableness of a possible invasion of one's privacy, courts will consider: "(1) whether the plaintiff's privacy interest is objectively legitimate as recognized by society; (2) the nature and extent of the intrusion; and (3) whether the government has a compelling interest in intruding upon the plaintiff's privacy." *Goodwin*, 549 F. Supp.2d at 633.

Petitioners maintain that unlike the cases cited by the Authority, here there is a question of fact as to whether the Regulation requires continuous, live video feed. Petitioners allege that they are entitled to discover the duration of the live feed, when and how the video will be transmitted, and who will have access to the recordings. Further, there is nothing to prevent unauthorized employees or outside individuals from obtaining, copying, or misappropriating the video feeds.

Finally, the Authority asserts that Petitioners have failed to allege a violation of procedural and substantive due process rights. The Authority states that to maintain a claim for a violation of procedural due process rights, a plaintiff must allege: (1) the deprivation of an interest that is encompassed within the 14th

not complying with the Regulation. Depriving Petitioners of their rights to own and operate medallions for failing to comply with the Regulation when it is impossible to do so violates Petitioners' due process rights.

Although the Regulation is not yet in effect, Petitioners can challenge the regulation because they will suffer "actual, present harm before [its] enforcement." *Rouse & Associates-Ship Road Land Limited Partnership v. Pennsylvania Environmental Quality Board*, 642 A.2d 642, 646 (Pa. Cmwlth. 1994). Specifically, Petitioners will be harmed because they are required to purchase a safety camera system from Authority-approved vendors, which Petitioners have alleged are unwilling or unable to provide a system that complies with the Regulation. Whether a compliant safety camera system exists can be resolved only through discovery and the development of a full record. Moreover, the Regulation is not applied across the board because limousines are excluded, as are other car services.

At this juncture, this court cannot state that as a matter of law, Petitioners have failed to state a claim for which relief can be granted. Facts are in dispute as to whether the cameras will continuously record and simultaneously relay information. Additionally, questions exist as to who can view the information and whether there is a vendor capable of installing the safety camera systems.

Accordingly, this court entered an order on June 3, 2015, denying the Authority's motion for judgment on the pleadings.

  
ROCHELLE S. FRIEDMAN, Senior Judge