

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TRACIE PABST and BIG SKY
SHUTTLE, INC.,

Plaintiffs,

v.

TIM FOX, Attorney General of
Montana; BRAD JOHNSON,
Chairman of the Montana Public
Service Commission; TRAVIS
KAVULLA, Vice-Chairman of the
Montana Public Service Commission;
KIRK BUSHMAN, ROGER
KOOPMAN, BOB LAKE,
Commissioners of the Montana Public
Service Commission; and NICKIE
ECK, Business Operation Supervisor,
Montana Public Service Commission,
all in their official capacities,

Defendants.

No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
FOR DEPRIVATION OF
FEDERAL CIVIL RIGHTS
[42 U.S.C. § 1983]**

Jury Trial Not Demanded

INTRODUCTION

1. This case challenges the constitutionality of a state law that deprives Plaintiffs Tracie Pabst and Big Sky Shuttle, Inc., of their constitutional right to earn a living in a common occupation of their choice. That right is guaranteed by the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the United States Constitution.

2. Plaintiff Tracie Pabst is the owner of Big Sky Shuttle, Inc., a small transportation company based in Big Sky, Montana. Big Sky Shuttle, Inc., was originally founded in 2006 to provide transportation services between Bozeman and Big Sky, Montana, on a contract basis with a private club, but now they would like to operate as a taxi service in and around the community of Big Sky.

3. Plaintiffs are fully qualified and competent to perform these services, and have provided satisfactory transportation services to approximately 170,000 passengers. But Montana law (specifically, Sections 69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana) forbids them from operating a taxi company unless they first obtain a Certificate of Public Convenience and Necessity (PCN) from the Defendants.

4. To obtain a Certificate, however, Plaintiffs are required to undergo an unconstitutional “Competitor’s Veto” procedure which gives the state’s existing

transportation companies the power to essentially “veto” any application. Specifically, these rules allow established transportation companies to file a protest whenever a person applies for a PCN, and whenever a protest is filed, the applicant must undergo an administrative hearing, at significant expense in time and money. At that hearing, the Montana Public Service Commission decides whether to issue a PCN on the basis of vague, undefined, and subjective criteria, including, *inter alia*, “the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected,” and whether “public convenience and necessity require the authorization of the service.” Mont. Code Ann. § 69-12-323(2)(a). These factors allow Defendants to deny a PCN to an applicant for reasons totally unrelated to public health, safety, or welfare. Also, existing transportation businesses can impose on applicants the cost and burden of participating in a hearing without the need to allege or prove any facts relating to public health, safety, or welfare.

5. The Competitor’s Veto procedure challenged herein bears no rational connection to a legitimate government interest, but exists solely to protect established transportation companies against competition from applicants like the Plaintiffs. Instead, Mont. Code Ann. § 69-12-312, *et seq.*, is designed to favor economically

certain constituents—existing taxi firms—at the expense of others similarly situated, such as the Plaintiffs.

6. Plaintiffs seek to protect and vindicate their right to earn a living without being subject to this arbitrary and discriminatory barrier established by state law. Plaintiffs seek declaratory judgment that the challenged laws and policies are invalid, unenforceable, and void; permanent injunctions against any further enforcement of the challenged laws, or implementation of any similar policy by the Defendants; and reasonable attorney’s fees, pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

7. Plaintiffs allege, pursuant to 42 U.S.C. § 1983, the deprivation of rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Plaintiff Tracie Pabst also alleges, pursuant to 42 U.S.C. § 1983, the deprivation of rights secured by the Privileges or Immunities Clause of the Fourteenth Amendment. Jurisdiction over their claims for declaratory and injunctive relief is vested in this Court by 28 U.S.C. §§ 1331, 2201, and 2202.

8. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that some or all of the conduct at issue took place in, and/or some or all of the Defendants reside in, the District of Montana.

PARTIES

Plaintiffs

9. Plaintiff Tracie Pabst is a United States citizen and resident of Big Sky, Montana. She entered the transportation business in 2006, and has operated successful shuttle businesses in Big Sky, as well as in North Dakota, New Mexico, and Texas. Ms. Pabst is the sole owner and Chief Executive Officer of Big Sky Shuttle, Inc.

10. Plaintiff Big Sky Shuttle, Inc., is a Montana corporation headquartered in Big Sky, Montana. Although not currently providing transportation services in Montana, it has previously transported over 170,000 passengers. Plaintiffs hold United States Department of Transportation Identification Number 1569797. Big Sky Shuttle, Inc., currently employs 5 persons, including Plaintiff Pabst. Plaintiff Pabst and her company, Big Sky Shuttle, Inc., initially operated in Big Sky by providing rides for employees of a private club, and for that reason were not required to obtain a PCN at that time. It now operates in Texas and New Mexico, where it operates a fleet of five shuttles (three 33-passenger shuttles, one 29-passenger shuttle, and one 33-passenger shuttle). In its previous operations in Montana, and its operations in North Dakota, Texas, and New Mexico, Big Sky Shuttle, Inc., has a sterling safety

record, having never had an accident or moving violation in almost nine years of operation.

11. Plaintiffs possess all legally required insurance for their current operations, including, but not limited to, a \$4 million umbrella policy covering all Big Sky Shuttle's buses and drivers, as well as workers' compensation insurance for those states in which Big Sky Shuttle currently operates. *Cf.* Mont. Admin. R. 38.3.701, *et seq.* (listing insurance requirements).

12. Plaintiffs are ready, willing, and able to provide taxi services at any time when such opportunities arise.

Defendants

13. Defendant Tim Fox is the Attorney General of Montana. Plaintiffs are informed and believe, and on that basis allege, that Mr. Fox, in his official capacity, is charged with the enforcement, maintenance, and interpretation of the laws of the State of Montana, including Mont. Code Ann. § 69-12-312, *et seq.* Plaintiffs are informed and believe, and on that basis allege, that Mr. Fox has the authority to prosecute, enjoin, fine, and otherwise prohibit Plaintiffs and other persons from operating a taxi business without a PCN, and is ultimately responsible for the enforcement of the statutes challenged herein. *See* Mont. Code Ann. §§ 69-14-132, 69-14-134. In all of his actions and omissions alleged herein, Mr. Conway was acting

under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

14. Defendant Brad Johnson is Chairman of the Montana Public Service Commission. Plaintiffs are informed and believe, and on that basis allege, that Mr. Johnson, in his official capacity, is authorized to adopt any rules and establish any policy to implement the protest and hearing procedure set forth in Mont. Code Ann. § 69-12-312, *et seq.*, and to enforce the PCN requirement under Mont. Code Ann. § 69-12-209. In all of his actions and omissions alleged herein, Mr. Johnson was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

15. Defendant Travis Kavulla is Vice-Chairman of the Montana Public Service Commission. Plaintiffs are informed and believe, and on that basis allege, that Mr. Kavulla, in his official capacity, is authorized to adopt any rules and establish any policy to implement the protest and hearing procedure set forth in Mont. Code Ann. § 69-12-312, *et seq.*, and to enforce the PCN requirement under Mont. Code Ann. § 69-12-209. In all of his actions and omissions alleged herein, Mr. Kavulla was acting under color of state law and is being sued in this action in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

16. Defendants Kirk Bushman, Roger Koopman, and Bob Lake are Commissioners of the Montana Public Service Commission. Plaintiffs are informed and believe, and on that basis allege, that Messrs. Bushman, Koopman, and Lake, in their official capacities, are authorized to adopt any rules and establish any policy to implement the protest and hearing procedure set forth in Mont. Code Ann. § 69-12-312, *et seq.*, and to enforce the PCN requirement under Mont. Code Ann. § 69-12-209. In all of their actions and omissions alleged herein, Messrs. Bushman, Koopman, and Lake were acting under color of state law and are being sued in this action in their official capacities pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

17. Defendant Nickie Eck is Business Operation Supervisor of the Montana Public Service Commission. Plaintiffs are informed and believe, and on that basis allege, that Ms. Eck, in her official capacity, is authorized to implement the protest and hearing procedure set forth in Mont. Code Ann. § 69-12-312, *et seq.*, and to enforce the PCN requirement under Mont. Code Ann. § 69-12-209. In all of her actions and omissions alleged herein, Ms. Eck was acting under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

GENERAL ALLEGATIONS

I

THE CHALLENGED LAWS

18. Mont. Code Ann. § 61-12-301 divides up “motor carrier” businesses into several categories. Category “B” includes taxi companies. Mont. Code Ann. § 61-12-312(1) requires Category B motor carrier companies to obtain a PCN before offering for-hire transportation services to the public. Operating without a PCN is a civil offense punishable by penalties of fines of between \$25 and \$500 for the first offense, and fines between \$25 and \$1,000 for each subsequent offense. Mont. Code Ann. § 69-12-108. Operating without a PCN is also a misdemeanor punishable by fines of the same amounts. Mont. Code Ann. §§ 69-12-108 and 3-10-303. The Commission or any party injured may apply for a court injunction to prohibit further violations. Mont. Code Ann. § 69-12-209.

19. To obtain a PCN, a person must file an application with the Public Service Commission that provides the Commission with information about the applicant’s proposed business. Mont. Code Ann. § 69-12-312.

20. Once an application is filed, the Public Service Commission must notify “any interested party” of the filing of the application. An “interested party” is defined

as, *inter alia*, any existing motor carrier, and “any person or corporation concerned.”
Mont. Code Ann. § 69-12-321(2).

21. An interested party may then file a “protest” against the granting of the application. Mont. Code Ann. § 69-12-321(1). A protest must specify whether the application is being protested in whole or in part, must identify the specific areas that the applicant proposes to serve which “conflict” with the areas served by the protesting motor carrier, and must include “a statement of the protesting motor carrier’s annual revenues received for services provided in” the areas that the applicant proposes to serve which “conflict” with those served by the protesting motor carrier. Mont. Admin. R. 38.3.405(1). Plaintiffs are informed and believe, and on that basis allege, that no law, regulation, or other legal authority, requires that a protest state any facts or allegations relating to public health and safety or to an applicant’s fitness or capacity to practice the trade of motor carriage or motor transportation. Plaintiffs are informed and believe, and on that basis allege, that the protests the Commission has received and/or entertained have not related to public health and safety or to applicants’ fitness or capacity to practice the trade.

22. If a protest is filed, the Public Service Commission must schedule a hearing regarding the application. If no protest is filed, the Public Service Commission may act on the application without a hearing. Mont. Code Ann. § 69-12-

321(1). If a hearing is convened, the Commission notifies only the applicant and the protestants of the time and place of the hearing. Mont. Admin. R. 38.3.404.

23. Mont. Code Ann. § 69-12-323(2)(a) provides the standards the Commission must use when deciding whether to issue a PCN to an applicant. It provides that the Commission must (1) “give reasonable consideration to the transportation service being furnished or that will be furnished by any . . . existing transportation agency”; (2) “give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year”; and (3) “give due consideration to . . . the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.”

24. Plaintiffs are informed and believe, and on that basis allege, that no statute, regulation, or case law specifies the kinds of evidence which may be admitted, weighed, or classified as relevant or irrelevant, by the Commission at a PCN hearing. Plaintiffs are informed and believe, and on that basis allege, that at a hearing, the applicant bears the burden of establishing entitlement to a PCN. Plaintiffs are informed and believe, and on that basis allege, that no statute, regulation, or other

legal authority specifies what constitutes “reasonable consideration,” or “due consideration,” “essential and indispensable,” or “might be affected.”

25. After the hearing, the Commission must grant the PCN to the applicant if the Commission “finds from the evidence that public convenience and necessity require the authorization of the service proposed.” Mont. Code Ann. § 69-12-323(2)(a). Plaintiffs are informed and believe, and on that basis allege, that no Montana statute, regulation, or case law defines the term “public convenience and necessity.”

II

THE PLAINTIFFS ARE LEGALLY BARRED FROM OPERATING A SAFE, ECONOMICAL, AND SATISFACTORY TAXI BUSINESS

26. Plaintiffs’ business complies with public health and safety standards, and has all of the legally required insurance for their current operations. They do not have a PCN. Due to the challenged statutes and regulations, they are not authorized to operate a taxi service in Montana and will be subject to future penalties if they offer such services in Montana without first complying with the statutory procedure described herein.

27. Plaintiffs are informed and believe, and on that basis allege, that the protest and hearing procedure that the aforementioned Montana statutes and

regulations require before a person may obtain a PCN allows existing motor carriers companies to prevent applicants from entering into or expanding their businesses, and/or to impose significant costs on applicants. This reduces competition, and creates an artificial scarcity of transportation services which allows existing companies to keep prices artificially high, to the detriment of Montana consumers.

28. Plaintiffs are informed and believe, and on that basis allege, that the protest and hearing procedure and the vague and anti-competitive criteria for obtaining a PCN, set forth in Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules, do not protect the general public from fraudulent, unsafe, or incompetent practices, and do not rationally relate to an applicant's fitness or capacity to practice the trade of a motor carrier.

29. Plaintiffs are informed and believe, and on that basis allege, that these statutes and regulations allow existing transportation companies to force an applicant to undergo the time and expense of an administrative hearing without regard to the applicant's public safety record, or any other matter related to public health or safety, but simply because existing transportation companies seek to restrict competition.

30. Plaintiffs are informed and believe, and on that basis allege, that the challenged statutes deprive them of the liberty of pursuing their chosen trade, and do not protect the public from fraudulent, dangerous, or incompetent transportation

services, or protect the surface streets from falling into disrepair, or protect the environment from pollution or other public dangers. Plaintiffs are informed and believe, and on that basis allege, that Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules serve only the goal of protecting a discrete interest group from economic competition.

31. Plaintiffs are informed and believe, and on that basis allege, that the statutory procedure for objecting to PCN applications has no rational connection to the public health, safety, or welfare, or any other legitimate government interest, is arbitrary and irrational, and serves only to protect a discrete interest group from economic competition.

III

INJUNCTIVE RELIEF ALLEGATIONS

32. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

33. Plaintiffs are informed and believe, and on that basis allege, that they are subject to future fines and penalties if they operate a taxi service in Montana without a Certificate. *See* Mont. Code Ann. §§ 69-12-108, 69-12-209.

34. Due to Defendants' enforcement of the challenged laws, Plaintiffs, and others similarly situated, are now and will continue to be denied the right to pursue

their chosen occupation free from restrictions imposed by their economic competitors through the protest and hearing procedure and the vague criteria for a PCN challenged herein.

35. If not permanently enjoined by this Court, Defendants and their agents, representatives, and employees will continue to implement the licensing, protest, and hearing procedure established in Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules, and other similar policies and practices, which deprive Plaintiffs of liberty without due process of law, deny them the equal protection of the laws, and abridge the privileges or immunities of citizenship to Plaintiff Tracie Pabst.

36. In particular, the licensing, protest, and hearing procedure described herein arbitrarily, irrationally, and discriminatorily deprives Plaintiffs of the opportunity to pursue their chosen occupation as a taxi company in Big Sky, Montana. Thus the licensing, protest, and hearing procedure and criteria for obtaining a PCN are now causing and will continue to cause Plaintiffs to suffer irreparable injury, including but not limited to, loss of business opportunities and the deprivation of their livelihoods. Plaintiffs have no plain, speedy, and adequate remedy at law for such an injury.

37. Accordingly, injunctive relief is appropriate.

IV

DECLARATORY RELIEF ALLEGATIONS

38. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

39. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend, pursuant to 42 U.S.C. § 1983, that both on their face and as applied to Plaintiffs, the challenged laws violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Plaintiff Tracie Pabst also alleges, pursuant to 42 U.S.C. § 1983, that the challenged state statutes and regulations, both on their face and as applied to her, violate the Privileges or Immunities Clause of the Fourteenth Amendment. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend otherwise on all counts.

40. Accordingly, declaratory relief is appropriate.

FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF—DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS OF LAW

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

41. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

42. The protest and hearing procedure established in Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules does not bear any relationship to protecting the public health, safety, or welfare.

43. The requirement that any applicant for a PCN must be subject to protest by existing competitors, who may protest for reasons totally unrelated to the applicant's fitness or capacity to practice the trade of a taxi driver, and the requirement that the applicant consequently attend a hearing and prove a public convenience or necessity, creates an arbitrary, irrational, and fundamentally unfair procedure which infringes on the constitutional right of Plaintiffs to pursue their chosen occupation of providing transportation services in Montana. Plaintiffs are not allowed to engage in their chosen occupation unless they submit to this expensive and burdensome certification procedure that inherently grants existing businesses power to prevent potential competitors from entering the market.

44. The procedure creates an inherent conflict of interest, which allows existing competitors to exploit licensing laws to restrict or substantially burden their own competition for reasons unrelated to the public health, safety, or welfare. *See New State Ice Co. v. Leibmann*, 285 U.S. 262 (1932).

45. In addition, the criteria provided for determining whether to grant a PCN do not relate to the applicant's fitness or capacity to practice their chosen occupation providing transportation services in Montana. As a result, Defendants may deny any applicant a PCN for reasons unrelated to the public health, safety, or welfare.

46. By enforcing the arbitrary, irrational, unequal, and fundamentally unfair certification procedure described herein, Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiffs of their constitutional right to earn a living in a chosen profession without due process of law.

47. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

48. An actual controversy exists between the parties, in that Plaintiffs will continue to suffer an ongoing and irreparable harm unless the further enforcement of the procedures established by Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules are declared unlawful and enjoined by this Court.

**SECOND CLAIM FOR DECLARATORY AND
INJUNCTIVE RELIEF—EQUAL PROTECTION:
ARBITRARY AND IRRATIONAL DISCRIMINATION**

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

49. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

50. By granting existing carriers the special privilege to protest and object to certificate applicants, Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules create an irrational and arbitrary procedure which protects established businesses against competition.

51. By enforcing these unequal procedures, Defendants, acting under color of state law, are irrationally and arbitrarily discriminating against Plaintiffs and in favor of existing moving businesses in violation of Plaintiffs' right to equal protection of the laws.

52. Allowing established transportation companies an exclusive and special opportunity to prevent competitors from entering the moving business bears no rational relationship to public health, safety, or welfare.

53. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

54. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants' discriminatory treatment, and the harm will continue unless the protest and hearing procedure and the criteria for obtaining a PCN specified in Mont. Code Ann. §§ 69-12-312, 69-12-321, and 69-12-323, and Title 38, chapter 3 of the Montana Administrative Rules are declared unlawful and enjoined by this Court.

**THIRD CLAIM FOR DECLARATORY
AND INJUNCTIVE RELIEF—EQUAL
PROTECTION AND DUE PROCESS OF LAW:
UNBRIDLED DISCRETION OF PUBLIC OFFICIALS**

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

55. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

56. Section 69-12-323(2)(a) of the Montana Code, and the regulations and procedures by which Defendants enforce this section, provide no objective standards for determining whether the Defendants shall grant or withhold a PCN from an applicant.

57. Section 69-12-323(2)(a) and the regulations and procedures by which Defendants enforce this section, give Defendants and their staff unlimited and unguided discretion to interpret what constitutes (a) “public convenience and

necessity”; (b) “reasonable consideration to the transportation service being furnished or that will be furnished by any . . . existing transportation agency”; (c) and/or an “effect which the proposed transportation service may have upon other forms of transportation service”; as well what it means for an existing transportation service to be “essential and indispensable to the communities,” or whether those services “might be affected” by an applicant’s “proposed transportation service.”

58. As a result, the challenged statutes and the regulations and procedures by which Defendants enforce these statutes provide Plaintiffs no reasonable opportunity to understand what conduct they authorize or prohibit, and allow or encourage arbitrary and discriminatory enforcement.

59. By exercising unlimited, unguided discretion over applications for certificates, Defendants, acting under color of state law, violate Plaintiffs’ right to equal protection and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

60. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

61. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants’ exercise of unbridled and unguided discretion, and the harm will continue unless the protest and hearing

procedure established by Sections 69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana is declared unlawful and enjoined by this Court.

**FOURTH CLAIM FOR DECLARATORY AND
INJUNCTIVE RELIEF BY PLAINTIFF TRACIE PABST
ABRIDGMENT OF PRIVILEGES OR IMMUNITIES**

(U.S. Const. amend. XIV & 42 U.S.C. § 1983)

62. Plaintiff Tracie Pabst incorporates and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint.

63. By mandating an arbitrary and discriminatory protest and hearing procedure for an application to operate a taxi company, Defendants, acting under color of state law, arbitrarily and unreasonably interfere with Plaintiff Pabst's constitutional right to earn a living in a lawful occupation in violation of the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution.

64. Plaintiff Pabst is informed and believes, and on that basis alleges, that Defendants believe their actions comply with all applicable laws.

65. An actual controversy exists between the parties, in that Plaintiff Pabst is suffering an ongoing and irreparable harm by Defendants' favoritism towards existing carriers and their discriminatory treatment against Plaintiff Pabst, and the harm will continue unless the protest and hearing procedure established by Sections

69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana is declared unlawful and enjoined by this Court.

PRAYER

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. To enter a declaratory judgment that Montana's notice and hearing procedure, established by Sections 69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana, facially and as interpreted and applied by Defendants, deprives Plaintiffs of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

2. To enter a declaratory judgment that Montana's notice and hearing procedure, established by Sections 69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana, facially and as interpreted and applied by Defendants, deprives Plaintiffs of the equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

3. To enter a declaratory judgment that Montana's notice and hearing procedure, established by Sections 69-12-312, 69-12-321, and 69-12-323 of the

Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana, facially and as interpreted and applied by Defendants, facially and as interpreted and applied by Defendants, abridges Plaintiff Pabst's privileges or immunities of citizenship, in violation of the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution;

4. To permanently enjoin Defendants, their agents, representatives, and employees, from enforcing the notice and hearing procedure established by Sections 69-12-312, 69-12-321, and 69-12-323 of the Montana Code, and Title 38, chapter 3 of the Administrative Rules of Montana, facially and as interpreted and applied by Defendants, or any similar policy, as well as any and all implementing rules and regulations and the policies and practices by which Defendants enforce these provisions, including, but not limited to: (a) the policies of prohibiting Plaintiffs from operating intrastate as a taxi company without being subject to the arbitrary and discriminatory certification scheme and; (b) seeking or imposing fines or penalties against Plaintiffs; or (c) otherwise subjecting Plaintiffs to harassment;

5. For costs of suit;

6. For reasonable attorney fees, pursuant to 42 U.S.C. § 1988(b); and

7. Any such further legal and equitable relief as the Court may deem just and proper.

DATED: January ____, 2015.

Respectfully submitted,

By /s/ Quentin M. Rhoades
QUENTIN M. RHOADES

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