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TAXICAB ORDINANCE SURVIVES CONSTITUTIONAL SCRUTINY

In *Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, Tex.*, 2011 WL 4729013 (5th Cir. 2011) (decided October 10, 2011), an association representing small taxicab companies brought an action against the city, claiming that the city's ordinance regarding the distribution of new taxicab permits violated the Equal Protection Clause. The Fifth Circuit Court of Appeals held that the association failed to demonstrate that the ordinance, which drew distinctions between taxi companies based on size, had no legitimate purpose, and that the ordinance was rationally related to city's legitimate goals.

The Houston City Council passed an Ordinance authorizing 211 additional taxicab permits to be allocated over a four-year period. New taxicab permits had not been issued in six years, and the City wanted to expand its cab fleets. The ordinance planned to distribute new permits based on the size of the taxi company.

Small companies, defined as companies currently holding 1-3 permits, would enter a lottery for 16 new permits in the first year, and would have no opportunities for additional permits in years 2-4. Mid-small companies, those with 4-24 permits, would be eligible for 12 in the first three years, and would have no opportunities for the fourth year, Mid-large companies, those with 25-79, would be eligible for 12 in the first two years and eight in years three and four, and large companies, those with 80+ permits, would be eligible for 28 in the first three years and 24 the final year.

The City developed this plan after consulting with a number of key stakeholders. It formed a "Taxicab Working Group" comprising current taxi permit holders, community leaders, and City Council members. The group met over the course of several months to develop the proposal that ultimately became the Ordinance.

The reasoning behind this distribution scheme was explained in the Ordinance's preamble and in a memo to the City drafted by the City's Finance and Administration Director. The City viewed the four large companies as "full-service taxicab companies" in that they offered full

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24-hour radio dispatch services and complete on-site repair facilities for their vehicles. The mid-large companies offered only limited radio dispatch services. Mid-small and small companies, by contrast, generally did not offer 24-hour service; they communicated by cell phone and tended to operate primarily at the airports. The City concluded further that larger taxi companies were better able to provide disabled access vehicles and more efficient, environmentally friendly taxicabs.

The ordinance also authorized additional permitting in limited circumstances. Under § 46-66(d), "a qualified other applicant who meets the criteria set forth below may petition the city council requesting that he be granted permits or additional permits...." Subsection 46-66(e) provided the "total number of additional permits granted to all petitioners" under subsection (d) "may not exceed 25 percent of the available permit number." According to the City, this provision acted as a safeguard to provide additional permit opportunities for smaller companies that could, in fact, provide the same services as the larger taxi companies.

... this provision acted as a safeguard to provide additional permit opportunities for smaller companies ...

The Greater Houston Small Taxicab Company Owners Association represented 60 of the 117 small taxi companies that each held one to three taxi permits with the City. The Association argued that the distribution proposal in the Ordinance violated the 14th Amendment's Equal Protection Clause. The Association first obtained a temporary restraining order preventing the City from enforcing the ordinance, and sought declaratory and injunctive relief. The court granted the city's motion for summary judgment and the Association appealed.

On appeal, the Association contended that the Ordinance violated equal protection by drawing impermissible distinctions between taxi companies based on their size. The Association claimed that because there was no meaningful distinction in the level of service provided by mid-small taxi companies and small taxi companies, the City could not permissibly guarantee the growth of the mid-small companies by awarding them many new permits while essentially preventing the growth of 101 out of the 117 small taxi companies that offered the same service. The Association argued further that the City's real motivation was economic favoritism.

The parties agreed that the constitutional challenge at issue should be reviewed according to the rational basis test. Under this standard, a legislative classification will be upheld "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." Legislation need not pursue its permissible goal by using the least restrictive means of classification; consequently, the Equal Protection Clause is not violated "merely because the classifications made ... are imperfect."

The Association relied on a number of cases in which federal courts invalidated state and local laws under the rational basis test, but it relied most heavily on *Craigmiles v. Giles*, 312 F.3d 220, 2002-2 Trade Cas. (CCH) ¶ 73893, 2002 FED App. 0417P (6th Cir. 2002). In *Craigmiles*, the Sixth Circuit overturned a Tennessee law requiring all casket sellers, including those who provided no funeral services, to obtain a funeral director's license. The Sixth Circuit held that the law had no rational relationship to the goals advocated by the government, which included a desire to make businesses that deal with bereaved clients more attuned to the grieving process. The court found that the law advanced an illegitimate purpose by imposing "a significant barrier to competition in the casket market." The court also determined that the legislature's stated goals were "pretextual," a "naked attempt to raise a fortress protecting the monopoly rents that funeral directors extract from consumers." The Association interpreted *Craigmiles* and similar cases to mean that the Equal Protection Clause required ordinances to further a public goal rather than isolated private interests.

The City argued that its purpose was not economic favoritism, but rather: "(i) to foster enhanced competition within the taxicab industry, (ii) to increase the level and quality of taxicab service available to the public for other than city airport departure trips, and (iii) to promote more efficient utilization of taxicabs, which purposes should enhance the public satisfaction and generate operating cost and fare savings." The City contended that small and mid-small taxi companies were neither identical nor even similarly situated to each other. The

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majority of the small companies were solo operators, while mid-small companies operated several vehicles and were far more likely to fulfill the City's purposes.

The court sided with the City. First, the court explained that *Craigmiles* was not helpful to the Association. That case involved a statute that treated very different businesses as though they were the same. Here, the ordinance treated similar businesses differently. In *Craigmiles*, there was no logical reason to require casket sellers to obtain funeral director licenses because the types of services at issue were fundamentally different. Here, however, the City offered a reasonable explanation for the disparate distribution of permits: the larger the taxi company, the more likely it was to offer a broader range of services that better serve consumer needs.

Moreover, even if the City was motivated in part by economic protectionism, there was no real dispute that promoting full-service taxi operations was a legitimate government purpose under the rational basis test. *Craigmiles* and other cases supported the idea that naked economic preferences are impermissible to the extent that they harm consumers. The record here provided no reason to believe that consumers would suffer harm under the Ordinance. Thus the Association did not demonstrate that the Ordinance had no legitimate purpose.

The Association contended that even if the City's objective was legitimate, the Ordinance was not rationally related to that objective because the Ordinance would not expand full-service taxi operations. But the court explained that the rationality standard is a low threshold; to be valid, the Ordinance need only "find some footing in the realities of the subject addressed by the legislation." Because the fit between means and ends need not be mathematically tight, there was no need for further factual development of the rational relationship in this case.

The Association challenged the award of three new permits to each of the 12 companies in the small mid-size category because such a measure would not induce them to begin offering 24-hour dispatch service or other preferred services. Thus, the City's decision to enable those companies to expand, while severely limiting the growth opportunities of the Association's members, was irrational and arbitrary. The Association further asserted that there were several simpler means for the City to achieve its purported goal. For example, the City could have required that a business provide 24-hour dispatch service and/or full on-site repair facilities as conditions for some or all new permits. The Association argued that by not pursuing such alternatives, the ordinance demonstrated a lack of rationality.

Those arguments, however, did not persuade the court that the Ordinance had no rational relationship to the City's legitimate goals. The Supreme Court has noted repeatedly that as long as an Ordinance "has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." The City might have found better methods for distributing new permits, but the 14th Amendment did not require it to do so. Nor was the distinction between small-midsize and small companies irrational, as the Association contended. Because small-midsize companies may hold up to 24 permits, while the majority of the small companies were solo-operated taxis, there was a greater likelihood that the small-midsize companies would further the City's purposes by offering better, more efficient transportation for the public.

The Association argued that by not pursuing such alternatives, the ordinance demonstrated a lack of rationality.

The court also found two other considerations important in supporting its conclusion that the Ordinance passed constitutional muster. First, Code § 46-66(d) provides that "a qualified other applicant who meets the criteria set forth below may petition the city council requesting that he be granted permits or additional permits...." That a solo taxi operator who failed to win the permit lottery may petition for additional permits acted as a safeguard for any victims of the Ordinance's imperfect distribution scheme and mitigated fears of raw economic favoritism.

Second, the record reflected that the Ordinance would not significantly alter the current market share of small taxi companies. Before the Ordinance, the small companies held a 6.83% market share; post-Ordinance, after the grant of new permits, their market share would be 6.81%. The Ordinance simply preserved the competitive status quo.

The court concluded that although the distribution plan was not perfect, and there might have been more effective ways of promoting its goals, the City did enough to illustrate a rational relationship between its purpose and the Ordinance's means. The Ordinance provided more permits for all operators; it preserved the current market share for solo operators; and there was a mechanism to convey additional permits to small taxi companies. That was enough to survive rational basis review.

Research References:

Bodensteiner & Levinson, State & Local Government Civil Rights Liability § 1:15

McQuillin, The Law of Municipal Corporations § 19.16 (3d ed.)

Sands & Libonati, Local Government Law § 15.12

Judith O'Gallagher

HOMELESS CHALLENGE TWO CITY ORDINANCES

In *Catron v. City of St. Petersburg*, 2011 WL 4467598 (11th Cir. 2011) (decided September 28, 2011), several homeless residents challenged the constitutionality of two city ordinances authorizing city agents to exclude warned individuals from specific city land, and prohibiting storage of personal property on city land. The Eleventh Circuit Court of Appeals held that plaintiffs stated a claim that the trespass ordinance failed under the Due Process clause, but failed to state a claim that the ordinance was overbroad. Plaintiffs also failed to state a claim that the storage ordinance was facially void for vagueness.

Two city ordinances were at issue in this case. Section 20-30, known as the trespass ordinance, and Section 8-321, known as the storage ordinance. Plaintiffs' first three arguments on appeal were about Section 20-30, the trespass ordinance, which authorized certain city employees, including police officers, to issue a "trespass warning," which warned persons on public property to depart from that property and not to return.

The trespass ordinance gave authority to issue a trespass warning for public property in three instances:

> (1) "city employees or officials, or their designees, having control over a facility, building, or outdoor area, including municipal parks" may issue a trespass warning to "any individual who violates any city ordinance, rule or regulation, or state law or lawful directive of a city employee or official" for the public property where the violation occurred, (2) a police officer may issue a trespass warning, when the city official in control of the pertinent city property is unavailable, to "any individual who violates any city ordinance or state law" for the public property where the violation occurred but only if "the police officer [has] receive[d] the approval of the officer's immediate supervisor for the issuance of the trespass warning," and (3) any city employee or official has authority "to issue a trespass warning to any person for any lawful reason for any city property ..., when necessary or appropriate in the sole discretion of the city employee or official."

After a person received a trespass warning, they were subject to arrest if found on the pertinent public property in violation of the warning. Section 20-30 required trespass warnings to be for a limited time. For first-time violations, the trespass warning period may not exceed one year; for all other violations, the trespass-warning period may not exceed two years. A copy of the written trespass warning had to be provided to the warning-recipient, but no formal procedures were set out by which the recipient could challenge the basis of the warning or the terms of the warning.

Plaintiffs first argued that the trespass ordinance was unconstitutional facially, and as applied to Plaintiffs, in violation of the Due Process Clause of the 14th Amendment. Plaintiffs had to prove that they suffered a deprivation of a constitutionally-protected liberty or property interest, by a state actor, and were afforded constitutionally-inadequate process.

Here, plaintiffs' allegations that the City prohibited them from being in city parks, on public sidewalks, and at bus shelters located on public sidewalks satisfied the first element for a procedural due process claim. The parties did not dispute that state action was present. Therefore, due process was needed, and the question became whether Section 20-30 provided constitutionally adequate process.

To determine whether the ordinance satisfied the constitutional requirement of procedural due process, the court applied the balancing test found in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976):

> identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Because Plaintiffs possessed a private liberty interest in lawfully visiting city property that was open to the

Source: **Legal > / . . . / > 5th Circuit - US Court of Appeals, District & Bankruptcy Cases, Combined**
Terms: **name(taxicab and city of houston) and date geq (12/12/2010)** (Suggest Terms for My Search)

*660 F.3d 235, *; 2011 U.S. App. LEXIS 20590, **

GREATER HOUSTON SMALL **TAXICAB** COMPANY OWNERS ASSOCIATION, Plaintiff - Appellant v. **CITY OF HOUSTON,** TEXAS, Defendant - Appellee

No. 10-20381

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

660 F.3d 235; 2011 U.S. App. LEXIS 20590

October 10, 2011, Filed

PRIOR HISTORY: [1]**
Appeal from the United States District Court for the Southern District of Texas.
Greater Houston Small Taxicab Co. Owners Assoc. v. City of Houston, 2010 U.S. Dist. LEXIS 143878 (S.D. Tex., Apr. 26, 2010)

DISPOSITION: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff association sued defendant city, alleging that the city's plan to distribute new taxicab permits violated the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Southern District of Texas granted summary judgment to the city. The association appealed.

OVERVIEW: The city passed an ordinance authorizing 211 additional taxicab permits to be allocated over the subsequent four-year period. The association, which represented approximately 60 of the 117 small taxi companies that each held one to three taxi permits with the city, contended that the ordinance violated equal protection by drawing impermissible distinctions between taxi companies based on their size. The appellate court determined that the ordinance did not violated the Equal Protection Clause because (1) the city offered a reasonable explanation for the disparate distribution of permits by contending that the larger the taxi company, the more likely it was to offer a broader range of services that better served consumer needs, and promoting full-service taxi operations was a legitimate government purpose under the rational basis test, and (2) the city did enough to illustrate a rational relationship between its purpose and the ordinance's means since the distinction between small-midsize and small companies was not irrational.

OUTCOME: The appellate court affirmed.

CORE TERMS: ordinance, taxi, taxicab, new permits, mid-small, rational relationship, classification, summary judgment, rational basis test, legitimate purpose, full-service, consumer, market share, dispatch, funeral director's, impermissible, small-midsize, rationality, casket, favoritism, mid-large, lottery, solo, parties agree, rational relationship, distribute, irrational, discovery, quotation, imperfect

LEXISNEXIS® HEADNOTES Hide

Governments > Local Governments > Licenses

HN1 The Code of Ordinances for the City of Houston, Texas authorizes additional permitting in limited circumstances. Under City of Houston, Tex., Code of Ordinances § 46- 66(d), a qualified other applicant who meets the criteria set forth below may petition the city council requesting that he be granted permits or additional permits. Subsection 46-66(e) provides the total number of additional permits granted to all petitioners under subsection (d) may not exceed 25% of the available permit number. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Summary Judgment > Standards > Appropriateness

HN2 An appellate court reviews a district court's grant of summary judgment de novo, applying the same standards as the district court. Summary judgment is warranted if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Appeals > Reviewability > General Overview

HN3 An argument is not waived on appeal if the argument on the issue before the district court was sufficient to permit the district court to rule on it. More Like This Headnote

Constitutional Law > Equal Protection > Level of Review

HN4 Under the rational basis test, a legislative classification will be upheld if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. Because all legislation classifies its objects, differential treatment is justified by any reasonably conceivable state of facts. Legislation need not pursue its permissible goal by using the least restrictive means of classification; consequently, the Equal Protection Clause is not violated merely because the classifications made are imperfect. Despite its deference, however, the rational basis test is not a toothless one. A necessary corollary to and implication of rationality as a test is that there will be situations where proffered reasons are not rational. More Like This Headnote | *Shepardize:* Restrict By Headnote

Constitutional Law > Equal Protection > Scope of Protection

HN5 In the equal protection context, naked economic preferences are impermissible to the extent that they harm consumers. More Like This Headnote

Constitutional Law > Equal Protection > Level of Review

HN6 In the equal protection context, the rationality standard is a low threshold; to be valid, an ordinance need only find some footing in the realities of the subject addressed by the legislation. The fit between means and ends need not be mathematically tight. More Like This Headnote

Constitutional Law > Equal Protection > Scope of Protection

HN7 As long as an ordinance has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. More Like This Headnote

Governments > Local Governments > Licenses

HN8 See City of Houston, Tex., Code of Ordinances § 46-66(d).

COUNSEL: For GREATER HOUSTON SMALL TAXICAB COMPANY OWNERS ASSOCIATION, Plaintiff - Appellant: Martin Jonathan Siegel, Law Office of Martin J. Siegel. P.C., Houston, TX; Daniel J. Goldberg, Houston, TX.

For CITY OF HOUSTON TEXAS, Defendant - Appellee: Mary H. Burke, Esq., Senior Assistant City Attorney, Judith Lee Ramsey, Esq., Senior Attorney, City of Houston, Legal Department, Houston, TX.

For PACIFIC LEGAL FOUNDATION, Amicus Curiae: Timothy Mason Sandefur, Pacific Legal Foundation, Sacramento, CA.

JUDGES: Before JONES, Chief Judge, and KING and BARKSDALE, Circuit Judges.

OPINION BY: EDITH H. JONES

OPINION

[*237] EDITH H. JONES, Chief Judge:

The Greater Houston Small Taxicab Company Owners Association, a group representing taxicab companies that hold only one to three permits for cabs, asserts that the City of Houston's plan to distribute new taxicab permits violates the Equal Protection Clause of the Fourteenth Amendment. The district court granted summary judgment to the City. We AFFIRM.

I. BACKGROUND

A. The Ordinance at Issue

On December 12, 2007, the Houston City Council ("the City") passed Ordinance 2007-1419 ("the Ordinance") authorizing 211 **[**2]** additional taxicab permits to be allocated over the subsequent four-year period. New taxicab permits had not been issued in Houston since 2001, and the City wanted to expand its cab fleets. The ordinance planned to distribute new permits based on the size of the taxi company. The size categories are:

Number of current permits	Classification
80+	Lar
25 - 79	Mid-lar
4 - 24	Mid-sm
1 - 3	Sm
0	New entra

The 211 permits would be issued over the course of four years as follows:

	Year 1	Year 2	Year 3	Year 4
Large companies (4 total)	28	28	28	
Mid-large companies (4 total)	12	12	8	
Mid-small companies (12 total)	12	12	12	
Small companies (117 total)	16[1]	0	0	
New entrants	11	0	0	
TOTAL	**79**	**52**	**48**	

FOOTNOTES

1 The 16 were to be chosen by lottery from among the 117 existing small taxi companies.

As the chart illustrates, small companies would enter a lottery for 16 new permits in the first year, and would have no opportunities for additional permits in years 2-4.

The City developed this plan after consulting with a number of key stakeholders. It formed a "Taxicab Working Group" comprising current taxi permit holders, community leaders, and City Council members. The group, which included three sub-committees, met over the course of **[*238]** several **[**3]** months to develop the proposal that ultimately became the Ordinance.

Most of the reasoning behind this distribution scheme is explained in the Ordinance's preamble and in a memo to the City drafted by the City's Finance and Administration Director. The City viewed the four large companies as "full-service taxicab companies" in that they offer, among other things, full 24-hour radio dispatch services and complete on-site repair facilities for their vehicles. The mid-large companies offer only "limited radio dispatch services." Mid-small and small companies, by contrast, generally do not offer 24-hour service; they communicate by cell phone and tend to operate primarily at the airports. The City concluded further that larger taxi companies are better able to provide disabled access vehicles and more efficient, environmentally friendly taxicabs.

As a supplement to this distribution scheme, HN1 the Code of Ordinances for the City authorizes additional permitting in limited circumstances. Under § 46- 66(d), "a qualified other applicant who meets the criteria set forth below may petition the city council requesting that he be granted permits or additional permits . . . ."[2] Subsection 46-66(e) **[**4]** provides the "total number of additional permits granted to all petitioners" under subsection (d) "may not exceed 25 percent of the available permit number." According to the City, this provision acts as a safeguard to provide additional permit opportunities for smaller companies that could, in fact, provide the same services as the larger taxi companies.

FOOTNOTES

2 Subsection 46-66(d) is already part of the City Code and pre-dates the Ordinance. The parties agree that the Ordinance would not affect § 46-66(d).

B. Proceedings

Plaintiff-appellant, the Greater Houston Small Taxicab Company Owners Association ("the Association"), represents approximately 60 of the 117 small taxi companies that each hold one to three taxi permits with the City. The Association filed an action under 42 U.S.C. § 1983 against the City in May 2008, arguing that the distribution proposal in the Ordinance violated the Fourteenth Amendment's Equal Protection Clause. The Association first obtained a temporary restraining order preventing the City from enforcing the distribution plan. The Association then sought declaratory and injunctive relief.

The City moved to dismiss. Following limited discovery, the court converted the **[**5]** motion to dismiss to a motion for summary judgment and held for the City. The Association has timely appealed.

II. DISCUSSION

HN2 "This court reviews the district court's grant of summary judgment *de novo*, applying the same standards as the district court. Summary judgment is warranted if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine [dispute] as to any material fact and that the movant is entitled to judgment as a matter of law." *DePree v. Saunders*, 588 F.3d 282, 286 (5th Cir. 2009) (internal citations and quotations omitted); *see also* Fed. R. Civ. P. 56(a).

On appeal, the Association contends that the Ordinance violates equal protection by drawing

impermissible distinctions between taxi companies based on their size.[3] The Association claims that **[*239]** because there is no meaningful distinction in the level of service provided by mid-small taxi companies and small taxi companies, the City cannot permissibly guarantee the growth of the mid-small companies by awarding them many new permits while essentially preventing the growth of 101 out of the 117 small taxi companies that offer the same service.[4] The Association argues further **[**6]** that the City's real motivation is economic favoritism.

FOOTNOTES

3 The Association appears to accept that the City may enact *some* basis to regulate entry into the taxi market. The Association has not argued that quotas on taxi permits are *per se* impermissible; it quarrels only with the particulars of this Ordinance. Our opinion is limited to the Association's arguments.

4 The City argues that the Association did not raise this argument before the district court, and we therefore should consider it waived. We disagree. We have noted that HN3 "an argument is not waived on appeal if the argument on the issue before the district court was sufficient to permit the district court to rule on it." *In re Liljeberg Enters., Inc.*, 304 F.3d 410, 428 n.29 (5th Cir. 2002) (citing *Brown v. Ames*, 201 F.3d 654, 663 (5th Cir. 2000)). That is the case here. The record contains numerous references in the proceedings below, by the parties and by the magistrate judge, to the small/medium and full-service/non-full-service distinctions. More important, the district court's order denying the Association's motion for an injunction pending appeal noted that on appeal, the "Association essentially advances the same points and **[**7]** authorities as those in its response to the City's motion for summary judgment." To be sure, the Association might have raised the argument "more specifically," but it plainly did enough to avoid waiver.

The parties agree that the constitutional challenge at issue is reviewed according to the rational basis test. HN4 Under this standard, a legislative classification will be upheld "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993). Because all legislation classifies its objects, differential treatment is justified by "any reasonably conceivable state of facts." *Id.* Legislation need not pursue its permissible goal by using the least restrictive means of classification; consequently, the Equal Protection Clause is not violated "merely because the classifications made . . . are imperfect." *Johnson v. Rodriguez*, 110 F.3d 299, 306 (5th Cir.), *cert. denied*, 522 U.S. 995, 118 S. Ct. 559, 139 L. Ed. 2d 400 (1997) (quotation omitted). Despite its deference, however, the rational basis test "is not a toothless one." *Schweiker v. Wilson*, 450 U.S. 221, 234, 101 S. Ct. 1074, 67 L. Ed. 2d 186 (1981). A "necessary corollary to and implication of rationality as a test **[**8]** is that there will be situations where proffered reasons are not rational." *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95, 112 n.9 (3d Cir. 2008). We consider each of those prongs — legitimate purpose and rational relationship — in turn.

A. Legitimate Purpose

The Association argues that the Ordinance represents a desire to prefer one or two classes of taxi companies over similarly situated competitors with no resulting public benefit. This, the Association claims, is not a legitimate purpose for a city ordinance.

The Association directs us to a number of cases in which federal courts have invalidated (much different) state and local laws under the rational basis test, but it relies most heavily on *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002). In *Craigmiles*, the Sixth Circuit overturned a Tennessee law requiring all casket sellers, including those who provided no funeral services, to obtain a funeral director's license. The Sixth Circuit held that the law bore no rational relationship to the goals advocated by the government, which included, *inter alia*, a desire to make businesses that deal with bereaved clients more attuned to the **[*240]** grieving process. *Id.* at 228. The court found that **[**9]** the law advanced an "obvious illegitimate purpose" by imposing "a significant barrier to competition in the casket market." *Id.* The legislature's stated goals were also "pretextual," a "naked attempt to raise a fortress protecting the monopoly rents that funeral directors extract from consumers." *Id.* at 229. The Association interprets *Craigmiles* and similar cases to mean that the Equal Protection Clause requires ordinances to further a public goal rather than isolated private

interests.

The City counters that its purpose is not economic favoritism, but rather encompasses the goals articulated in Houston's Taxicab Code, "(i) to foster enhanced competition within the taxicab industry, (ii) to increase the level and quality of taxicab service available to the public for other than city airport departure trips, and (iii) to promote more efficient utilization of taxicabs, which purposes should enhance the public satisfaction and generate operating cost and fare savings." Further, the City contends, small and mid-small taxi companies are neither identical nor even similarly situated to each other. The majority of the small companies are solo operators, while mid-small companies operate several **[**10]** vehicles and are far more likely to fulfill the City's purposes.

We believe the City has the stronger argument. First, *Craigmiles* is not helpful to the Association. That case involved a statute that treated very different businesses as though they were the same. We confront the inverse situation: an ordinance that treats similar businesses differently. In *Craigmiles*, there was no logical reason to require casket sellers to obtain funeral director licenses because the types of services at issue were fundamentally different. Here, however, the City has offered a reasonable explanation for the disparate distribution of permits: the larger the taxi company, the more likely it is to offer a broader range of services that better serve consumer needs.

Moreover, even if the City is motivated in part by economic protectionism, there is no real dispute that promoting full-service taxi operations is a legitimate government purpose under the rational basis test. *Craigmiles* and other cases confirm that HN5 naked economic preferences are impermissible to the extent that they harm consumers. The record here provides no reason to believe that consumers will suffer harm under the Ordinance. The Association **[**11]** has not demonstrated that the Ordinance has no legitimate purpose.

B. Rational Relationship

The Association contends that even if the City's objective was legitimate, the Ordinance is nevertheless not rationally related to that objective because the Ordinance will not expand full-service taxi operations. HN6 But the rationality standard is a low threshold; to be valid, the Ordinance need only "find some footing in the realities of the subject addressed by the legislation." *Heller v. Doe*, 509 U.S. at 321. Because the fit between means and ends need not be mathematically tight, there was no need for further factual development of the rational relationship in this case.

The Association challenges the award of three new permits to each of the 12 companies in the small mid-size category because such a measure will not induce them to begin offering 24-hour dispatch service or other preferred services. Thus, the City's decision to enable those companies to expand, while severely limiting the growth opportunities of the Association's members, was irrational and arbitrary. The Association further asserts that there were several simpler means for the City to **[*241]** achieve its purported goal. For example, **[**12]** the City could have required that a business provide 24-hour dispatch service and/or full on-site repair facilities as conditions for some or all new permits. That the City did not pursue such alternatives, the Association contends, demonstrates a lack of rationality.

These arguments do not persuade us that the Ordinance bears no rational relationship to the City's legitimate goals. The Supreme Court has noted repeatedly that HN7 as long as an Ordinance "has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). The City might have found better methods for distributing new permits, but the Fourteenth Amendment did not require it to do so. The Association's proffered alternative means, in fact, would harm its members far more — by denying them any new permits — than the Ordinance itself. Nor is the distinction between small-midsize and small companies irrational, as the Association contends. Because small-midsize companies may hold up to 24 permits, while the majority of the small companies are solo-operated taxis, **[**13]** there is a greater likelihood that the small-midsize companies will further the City's purposes by offering better, more efficient transportation for the public.

Two other considerations fortify the conclusion that the Ordinance passes constitutional muster. First, Code § 46-66(d) provides that HN8 "a qualified other applicant who meets the criteria set forth below

may petition the city council requesting that he be granted permits or additional permits . . . ." That a solo taxi operator who fails to win the permit lottery may petition for additional permits acts as a safeguard for any victims of the Ordinance's imperfect distribution scheme and mitigates fears of raw economic favoritism.

Second, the record reflects that the Ordinance will not significantly alter the current market share that small taxi companies enjoy. Before the Ordinance, the small companies held a 6.83% market share; post-Ordinance, after the grant of new permits, their market share will be 6.81% — virtually unchanged. The Ordinance simply preserves the competitive status quo.

The City has done enough to illustrate a rational relationship between its purpose and the Ordinance's means. To be sure, the distribution plan **[**14]** is not narrowly tailored, and there might have been more effective ways of promoting the City's goals. But the Ordinance provides more permits for all operators; it preserves the current market share for solo operators; and there is a mechanism to convey additional permits to small taxi companies. That is enough to survive rational basis review.

III. CONCLUSION

The Association has not demonstrated that the Ordinance violates the Equal Protection Clause by treating taxi companies differently based on their size. The judgment of the district court is **AFFIRMED**.

Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, 660 F.3d 235, 2011 U.S. App. LEXIS 20590 (5th Cir. Tex. 2011)

SHEPARD'S SUMMARY HIDE

Unrestricted *Shepard's* Summary

No subsequent appellate history. Prior history available.

Citing References:

Cautionary Analyses: **Distinguished (1)**

Other Sources: Statutes (1), Court Documents (2)

LexisNexis Headnotes: HN1 (1), HN2 (3), HN4 (2)

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PRIOR HISTORY (3 citing references) Hide Prior History

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1. Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, 2010 U.S. Dist. LEXIS 94815 (S.D. Tex. Mar. 25, 2010)

2. **Adopted by, Accepted by, Summary judgment granted by, Dismissed by:**
Greater Houston Small Taxicab Co. Owners Assoc. v. City of Houston, 2010 U.S. Dist. LEXIS 143878 (S.D. Tex. Apr. 26, 2010)

Affirmed by (CITATION YOU ENTERED):
Greater Houston Small Taxicab Co. Owners Ass'n v. City of Houston, 660 F.3d 235, 2011 U.S. App. LEXIS 20590 (5th Cir. Tex. 2011)

3. **Related proceeding at:**
Thien An Vo v. City of Houston, 2010 U.S. Dist. LEXIS 94344 (S.D. Tex. Sept. 10, 2010)

CITING DECISIONS (5 citing decisions)

5TH CIRCUIT - COURT OF APPEALS

4. **Cited by:**
St. Joseph Abbey v. Castille, 2012 U.S. App. LEXIS 22060, 2012-2 Trade Cas. (CCH) P78106 (5th Cir. La. Oct. 23, 2012) LexisNexis Headnotes HN4

2012 U.S. App. LEXIS 22060

5. **Cited by:**
ACE Am. Ins. Co. v. M-I, L.L.C., 699 F.3d 826, 2012 U.S. App. LEXIS 21892 (5th Cir. Tex. 2012) LexisNexis Headnotes HN2

2012 U.S. App. LEXIS 21892

6. **Cited by:**
Stanwood Boom Works, LLC v. BP Exploration & Prod., 476 Fed. Appx. 572, 2012 U.S. App. LEXIS 8366 (5th Cir. Tex. 2012) LexisNexis Headnotes HN2

476 Fed. Appx. 572 p.574

7. **Cited by:**
Time Warner Cable, Inc. v. Hudson, 667 F.3d 630, 2012 U.S. App. LEXIS 788, 55 Comm. Reg. (P & F) 271 (5th Cir. Tex. 2012) LexisNexis Headnotes HN2

667 F.3d 630 p.638

6TH CIRCUIT - U.S. DISTRICT COURTS

8. **Distinguished by:**
Bailey v. Callaghan, 2012 U.S. Dist. LEXIS 80281, 193 L.R.R.M. (BNA) 2820 (E.D. Mich. June 11, 2012) LexisNexis Headnotes HN1, HN4

2012 U.S. Dist. LEXIS 80281

ANNOTATED STATUTES (1 Citing Statute)

9. USCS Const. Amend. 14, @ 5

BRIEFS (2 Citing Briefs)

10. CHAIRMAN & COMM'RS OF THE PUC OF TEXAS v. TIME WARNER CABLE INC., 2011 U.S. Briefs 1236, 2012 U.S. S. Ct. Briefs LEXIS 1574 (U.S. Apr. 12, 2012)

11. ACE AMERICAN INS. CO. v. M-I, 2012 U.S. 5th Cir. Briefs 20080, 2012 U.S. 5th Cir. Briefs LEXIS 22 (5th Cir. May 7, 2012)

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