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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC23-95

GUSTAVO BOJORQUEZ d/b/a
G & Y TRANSPORTATION, et al.

Petitioners,

v. L.T. Nos. 2D20-3432;
19-CA-6391

STATE OF FLORIDA, et al.

Respondents.
_____/

ON DISCRETIONARY REVIEW FROM THE SECOND DISTRICT COURT OF APPEAL

APPENDIX TO PETITIONERS' JURISDICTIONAL BRIEF

CLARK & MARTINO, P.A.

J. Daniel Clark
Florida Bar No. 106471
dclark@clarmartino.com
3407 W Kennedy Blvd
Tampa, FL 33609

WAGNER MCLAUGHLIN & WHITTEMORE, P.A.

Jason K. Whittemore
Florida Bar No. 37256
jason@wagnerlaw.com
601 Bayshore Blvd.,
STE. 910
Tampa, FL 33606

CREED & GOWDY, P.A.

Bryan S. Gowdy
Florida Bar No. 176631
bgowdy@appellate-firm.com
Dimitrios A. Peteves
Florida Bar No. 123903
dpeteves@appellate-firm.com
865 May Street
Jacksonville, FL 32204

Attorneys for Petitioners

INDEX

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court on February 17, 2023, via the Florida Courts E-Filing Portal, which will serve a notice of electronic filing to all counsel of record:

Blaine H. Winship
OFFICE OF THE ATTORNEY GENERAL
400 S Monroe Street
Suite P1-01
Tallahassee, Florida 32399
Telephone: (850) 414-3300
blaine.winship@myfloridalegal.com
Counsel for the State of Florida

Robert E. Brazel
HILLSBOROUGH COUNTY
ATTORNEY'S OFFICE
601 E Kennedy Blvd., Floor 27
Tampa, Florida 33602-4932
Telephone: (813) 272-5670
BrazelR@hillsboroughcounty.org
MatthewsL@hillsboroughcounty.org
JohnsonNi@hillsboroughcounty.org
Counsel for Hillsborough County

Henry C. Whitaker.
Solicitor General
Daniel W. Bell
Chief Deputy Solicitor General
David M. Costello
Deputy Solicitor General
OFFICE OF THE ATTORNEY GENERAL
PL01, The Capitol
Tallahassee, Florida 32399
Telephone: (850) 414-3300
henry.whitaker@myfloridalegal.com
daniel.bell@myfloridalegal.com
david.costello@myfloridalegal.com
jenna.hodges@myfloridalegal.com
Counsel for the State of Florida

Jason K. Whittemore
WAGNER MCLAUGHLIN &
WHITTEMORE, P.A.
601 Bayshore Blvd., Suite 910
Tampa, Florida 33606
Telephone: (813) 225-4000
Jason@wagnerlaw.com
Arelys@wagnerlaw.com
Counsel for Petitioners

J. Daniel Clark
CLARK & MARTINO, P.A.
3407 W. Kennedy Blvd.
Tampa, FL 33609
Telephone: (813) 879-0700
dclark@clarkmartino.com
jliza@clarkmartino.com
Counsel for Petitioners

Gulf Coast Transportation, Inc., d/b/a United Cab, d/b/a United Taxi, d/b/a Tampa Bay Cab
Justin Morgaman
jdmorgaman@gmail.com

Bay & Beach Transportation, LLC; Bay & Beach Cab, LLC d/b/a Executive Cab; *and* ABC Taxi, LLC;
Nancy Castellano
castellano@mosesgroupllc.com

/s/ *Bryan S. Gowdy*
Attorney

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

GULF COAST TRANSPORTATION, INC., d/b/a UNITED CAB, UNITED TAXI AND TAMPA BAY CAB, SOUTH TAMPA CAR SERVICE, LLC, BLACK DIAMOND CAB SERVICE, LLC, A+ CAB TAMPA, INC., AFTAH ABDERRAHMANE d/b/a MOE TAXI, GUSTAVO BOJORQUEZ d/b/a G & Y TRANSPORTATION, GOLDEN BAY CAR SERVICE, INC., d/b/a AMERICAN TAXI OF TAMPA BAY, PALM TAXI SERVICE, LLC, ABBAY TAXI, LLC, AWASH TAXI, LLC, ABC TAXI, LLC, BAY & BEACH CAB, LLC, d/b/a EXECUTIVE CAB, BAY & BEACH TRANSPORTATION, LLC, CALL-B-4-DUI TRANSPORTATION, INC., ADDIS CAR SERVICE, INC., BLUE TAXI SERVICES, LLC, AAA CAB OF TAMPA, LLC, SHAH'S TAXI SERVICE, LLC, ACCESSIBLE TAXI, LLC, NEW TAMPA TAXI CAB, LLC, MIRETU MENGESHA d/b/a SUNSHINE TAXI, CHECKER CAB TRANSPORTATION, INC., RED TOP CAB COMPANY, YELLOW CAB COMPANY OF TAMPA, INC., TRANSAFE, INC., CONDOR GROUP, INC. d/b/a BLACK CAR, TRANSAFE TRANSPORTATION, INC. d/b/a LIMOX, HYDE PARK TAXI SERVICE, INC., GREEN TAXI CAB, INC., YBOR TAXI, LLC, DAVID'S AUTO SUPPLY, INC., VIP TAXI, INC. d/b/a A-1 TAXI COMPANY, MULUGETA WORKU d/b/a WHITE BLUE TAXICAB, ERMIYAS T. DESTA d/b/a WESTCHASE CAR SERVICES, WESTCHASE TAXI, LLC, and SAMUEL G. TESFAGIORGIS d/b/a UNITED CAB, individually and on behalf of all those similarly situated,

Appellants,

v.

HILLSBOROUGH COUNTY and

STATE OF FLORIDA,

Appellees.

STATE OF FLORIDA,

Appellant,

v.

GULF COAST TRANSPORTATION, INC., d/b/a, UNITED CAB, UNITED TAXI and TAMPA BAY CAB, SOUTH TAMPA CAR SERVICE, LLC, BLACK DIAMOND CAB SERVICE, LLC, A+ CAB TAMPA, INC., AFTAH ABDERRAHMANE d/b/a MOE TAXI, and GUSTAVO BOJORQUEZ, d/b/a G & Y TRANSPORTATION, individually and on behalf of all those similarly situated; and HILLSBOROUGH COUNTY,

Appellees.

Nos. 2D20-3326, 2D20-3432
CONSOLIDATED

October 7, 2022

Appeals from the Circuit Court for Hillsborough County; Paul L. Huey, Judge.

Bryan S. Gowdy and Dimitrios A. Peteves of Creed & Gowdy, P.A., Jacksonville; Jason K. Whittemore of Wagner McLaughlin, P.A., Tampa; and Anthony D. Martino of Clark & Martino, P.A., Tampa, for Gulf Coast Transportation, Inc., et al.

Robert E. Brazel, Chief Assistant County Attorney, Office of the County Attorney, Tampa, for Hillsborough County.

Ashley Moody, Attorney General, Amit Agarwal, Solicitor General, James H. Percival, Chief Deputy Solicitor General, Kevin A. Golembiewski, Deputy Solicitor General, David M. Costello, Assistant Solicitor General, Henry C. Whitaker, Solicitor General, and Daniel W. Bell, Chief Deputy Solicitor General, Tallahassee, for the State of Florida.

ATKINSON, Judge.

These consolidated appeals[1] arise from an inverse condemnation proceeding brought by Gulf Coast Transportation, Inc., doing business as United Cab, and several other taxicab companies operating in Hillsborough County (collectively, Taxicab Companies) against the State of Florida (the State) and Hillsborough County (the County).[2] In Case 2D20-3326, the Taxicab Companies appeal the trial court's final judgment in favor of the County.

In Case 2D20-3432, the State appeals the trial court's order denying its motion to dismiss the Taxicab Companies' complaint for

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[1] The cases were previously consolidated for oral argument, and we now consolidate them for purposes of this opinion.

[2] Throughout this opinion, references to the County as a party will be to "the County." However, references to Hillsborough County as a geographic location or when it is part of the name of a separate entity (for example, the Hillsborough County Public Transportation Commission) will be to "Hillsborough County."

failure to state a claim. We hold that the Taxicab Companies did not have a property interest for purposes of the Takings Clause. Accordingly, we affirm the judgment in favor of the County in Case 2D20-3326; we reverse the portion of the order denying the State's motion to dismiss and remand Case 2D20-3432 for further proceedings consistent with this opinion.

In 1976, the State enacted special legislation which created the Hillsborough County Consolidated Taxicab Commission and governed the makeup of its board of commissioners, its authority, and its operations. Ch. 76-383, Laws of Fla. The special act gave the Hillsborough County Consolidated Taxicab Commission broad powers, including the powers to issue and revoke public vehicle driver licenses and to require inspections, insurance, installation of two-way radios, background checks for public vehicle driver applications, and payment of public vehicle licensing and annual fees. *Id.*

In 1983, the legislature changed the commission's name to the Hillsborough County Public Transportation Commission (PTC). Ch. 83-423, Laws of Fla. The legislature again passed a special act concerning the PTC in 2001, but the PTC's powers and

responsibilities remained largely unchanged after the 1983 and 2001 special acts.[3] *See* ch. 2001-299, § 5, Laws of Fla.; *cf.* ch. 76-383, Laws of Fla.; ch. 83-423, Laws of Fla.

In 2012, the legislature again passed a special act concerning the PTC. Ch. 2012-247, Laws of Fla. In relevant part, the 2012 special act provided

> (2) Any certificate of public convenience and necessity for taxicabs or any taxicab permit previously or hereafter issued by the [PTC], created by chapter 83-423, Laws of Florida, is the private property of the holder of such certificate or permit.
>
> (3) The holder of a certificate of public convenience and necessity for taxicabs or a taxicab permit issued by the [PTC] may transfer the certificate or permit by pledge, sale, assignment, sublease, devise, or other means of transfer to another person. . . . Except for a transfer by devise or intestate succession, the transfer must be approved, in advance, by the [PTC], and the proposed transferee must first qualify to be a taxicab certificateholder or permitholder under commission rules. The proposed transferee of a transfer by devise or intestate succession must conditionally qualify as a taxicab certificateholder or permitholder under [PTC]

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[3] The 1983 special act that changed the commission's name did not change its powers, authority, or the makeup of its board of commissioners. In 2001, the legislature again passed a special act concerning the PTC that removed gender-specific references, protected the rights of PTC employees, created a PTC staff, and permitted the PTC to deny public vehicle driver licenses to or revoke such licenses of individuals convicted of sexual offenses or designated as sexual predators. Ch. 2001-299.

> rules within 120 days after the transfer, unless otherwise extended by the commission. The conditional nature of the qualification shall be removed upon the probate court's final adjudication that the proposed transferee is actually entitled to the ownership of the transferred certificate or permit.

Ch. 2012-247. The 2012 amendment also specifically recognized the "existing and authorized population cap and limits for taxicab permits" promulgated by the PTC in its rules and incorporated the "existing population cap and limits" into the amendment. *See* ch. 2012-247(4); *see also* Hillsborough County Public Transportation Commission, Rule 1-2.001(7) (Mar. 19, 2013) ("The [PTC] may at no time authorize more than one (1) Taxicab Type of service Permit per one thousand-nine hundred (1,900) inhabitants of Hillsborough County . . . .").

Through chapters 76-383, 83-423, 2001-299, and 2012-247, the legislature created an administrative body—the PTC—empowered to create and maintain a capped taxicab market in Hillsborough County. The PTC governed and regulated participation in this limited market by promulgating rules according to the special legislation and issuing certificates of public convenience and taxicab permits (collectively, medallions) to limit

the individuals or entities that could participate in what was effectively a closed market. A person could only participate in this closed market scheme while in possession of a valid medallion issued by the PTC according to its rules and the special legislation. The 2012 special legislation granted medallion holders property rights in their medallions so that they could transfer their medallions to otherwise qualifying individuals who wanted to compete in the closed market. The grant of property rights resulted in a secondary market in which medallion holders could transfer their medallions for value to other persons approved by the PTC or devise their medallions to persons who were required to become conditionally qualified to hold the medallions pursuant to PTC rules within 120 days.

The PTC, as created and modified by the special acts passed in 1976, 1983, 2001, and 2012, governed the taxicab industry in Hillsborough County until 2017 when the legislature dissolved the PTC and repealed the 2012 special act. Ch. 2017-198, Laws of Fla. Chapter 2017-198 did not transfer any of the PTC's assets or liabilities to the County or direct the County to adopt any specific regulatory scheme. The 2017 legislation repealing chapter

2012-247 did not address whether the County must compensate medallion holders for any loss of property rights in their medallions that had been conferred by chapter 2012-247 or otherwise recognize those property rights.

The PTC having been dissolved and the special legislation governing it having been repealed, the County was authorized to regulate vehicles for hire pursuant to section 125.01(1)(n), Florida Statutes (2017) (providing that the governing bodies of counties have the power to license and regulate passenger vehicles for hire in unincorporated areas and that the governing bodies of charter counties may issue a limited number of permits to operate taxis). The County passed a vehicle for hire ordinance which required persons desiring to engage in taxicab business in Hillsborough County to obtain certificates from the Tax Collector and permits for each vehicle for hire. Hillsborough County, Fla., Ordinance 17-22, (Sept. 7, 2017). The County's new ordinance did not recognize or grandfather in medallions issued by the PTC. *See id.*

The Taxicab Companies operated taxicabs in Hillsborough County while the special acts were in effect and had been issued medallions by the PTC. According to the 2012 special legislation,

the Taxicab Companies were given transferable "property" rights in their medallions. After the State enacted chapter 2017-198 and the County promulgated Ordinance 17-22, the Taxicab Companies could not use their PTC medallions to continue their business in Hillsborough County. Since medallions issued by the PTC no longer served to permit a person to operate a taxicab in Hillsborough County, the Taxicab Companies concluded that their medallions had been rendered worthless. The Taxicab Companies brought the underlying inverse condemnation action, claiming that the State and the County had taken their medallions without compensation.

In their second amended complaint, the Taxicab Companies alleged one count of unlawful taking without compensation against each governmental entity. In Count 1, the Taxicab Companies alleged that they had purchased the medallions at substantial cost; the new ordinance required them to purchase new certificates and permits; the County did not compensate them for or offer to purchase the old medallions; the old medallions could no longer be used to operate taxicabs in Hillsborough County or be transferred for value; and, therefore, the County has taken their property without compensation. In Count 2, the Taxicab Companies alleged

that the State had taken their private property by negating their taxicab medallions which rendered them valueless and deprived the Taxicab Companies of all reasonable and beneficial use of the medallions. Like in Count 1, the Taxicab Companies alleged that the State did not compensate them for or offer to purchase the old medallions. The second amended complaint did not allege that any of the Taxicab Companies were no longer operating in Hillsborough County or that any of them had been deprived of that opportunity either under the new County ordinance or as a result of the State's 2017 act dissolving the PTC and repealing the 2012 special legislation.

The County filed a motion for summary judgment, arguing that it could not be liable for any alleged taking because it neither granted nor removed any property rights that the Taxicab Companies may have had in their medallions. The State filed a motion to dismiss the Taxicab Companies' second amended complaint, arguing that the Taxicab Companies had no cognizable property rights in the old medallions and, even if they did, the County was responsible for any taking. In response to both the County's and the State's motions, the Taxicab Companies argued

that the taking occurred through the combined efforts of the State and the County.

After a hearing, the trial court entered an order, finding the following facts were undisputed: the PTC was a governmental entity created by the State, the PTC was independent and separate from the County, the County had no control or authority over the PTC or the issuance of medallions, and the State Legislature had limited control over the PTC since the legislature could modify or abolish the PTC. The trial court concluded as a matter of law that the County "had no power to do anything as to those [medallions] and, in fact, did nothing;" therefore, "there were no certificates for [the] County to take because" the medallions "had, in essence, vanished" as a consequence of the legislature's prior act of abolishing the PTC and repealing the 2012 legislation. For these reasons, the trial court granted the County's motion for summary judgment and entered a final judgment in favor of the County. In the same order, the trial court denied the State's motion to dismiss because the State had been "acting within its power" when it "cause[d] the demise of the PTC and, thus, its medallions" by legislatively

abolishing the PTC and repealing its 2012 special act that created property rights in the medallions.

We have jurisdiction to review the order denying the State's motion to dismiss pursuant to Florida Rule of Appellate Procedure 9.110(k) because the trial court's ruling on that motion is "directly related to an aspect"—whether a taking occurred within the meaning of the Florida Constitution—of the appealable final summary judgment in favor of the County. "A trial court's decision to grant summary judgment is reviewed *de novo*." *TLC Props., Inc. v. Dep't of Transp.*, 292 So. 3d 10, 13 (Fla. 1st DCA 2020) (citing *Mills v. State Farm Mut. Auto. Ins.*, 27 So. 3d 95, 96 (Fla. 1st DCA 2009)). "Because a ruling on a motion to dismiss for failure to state a cause of action is an issue of law, it is reviewable on appeal by the de novo standard of review." *Crocker v. Marks*, 856 So. 2d 1123, 1123 (Fla. 4th DCA 2003) (quoting *Bell v. Indian River Mem. Hosp.*, 778 So. 2d 1030, 1032 (Fla. 4th DCA 2001)).

The Florida Constitution provides that "[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner . . . ." Art. X, § 6(a), Fla. Const.; *see also TLC Props., Inc.*, 292 So. 3d at 13–14. Florida

courts have interpreted the Takings Clauses of the Florida and federal constitutions as operating "coextensively."[4] *Orlando Bar Grp., LLC v. DeSantis*, 339 So. 3d 487, 490 n.2 (Fla. 5th DCA 2022) (citing *St. Johns River Water Mgmt Dist. v. Koontz*, 77 So. 3d 1220, 1222 (Fla. 2011), *rev'd on other grounds*, 570 U.S. 595 (2013)). When the government has not formally instituted eminent domain proceedings, a property owner claiming that the government has taken his or her private property without compensation may file a cause of action for inverse condemnation, as the Taxicab Companies did in this case. *See TLC Props., Inc.*, 292 So. 3d at 14 (quoting *Schick v. Fla. Dep't of Agric.*, 504 So. 2d 1318, 1319 (Fla. 1st DCA 1987)).

In inverse condemnation proceedings, the "plaintiff must first demonstrate that he possesses a 'property interest' that is constitutionally protected. Only if the plaintiff actually possesses

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[4] Nevertheless, the Florida Supreme Court has recognized that the Florida Constitution provides for more extensive compensation than the Fifth Amendment Takings Clause because "full compensation" provided by the Florida Constitution includes reasonable attorney's fees whereas the "just compensation" provided by the Fifth Amendment does not include attorney's fees. *Joseph B. Doerr Tr. v. Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1215 n.5 (Fla. 2015).

such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a 'taking.' " *Checker Cab Ops., Inc. v. Miami-Dade County*, 899 F.3d 908, 917 (11th Cir. 2018) (quoting *Givens v. Ala. Dep't of Corr.*, 381 F.3d 1064, 1066 (11th Cir. 2004)); *see also Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000–04 (1984) (explaining that courts must first determine whether the plaintiff has a property interest protected by the Takings Clause in the thing which the government is alleged to have taken).

Privileges and licenses are not constitutionally protected property interests for purposes of the Takings Clause. *See Marine One, Inc. v. Manatee County*, 898 F.2d 1490, 1492–93 (11th Cir. 1990) (recognizing that revocation of "mere *licenses* . . . cannot rise to the level of a Fifth Amendment taking" (emphasis in original)); *see also Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1214 n.11 (N.D. Fla. 2020) ("To the extent Plaintiffs assert they possess a constitutionally protected property interest in the continued operation of their dog-racing businesses, Plaintiffs' participation in the dog-racing business is a privilege and is not a legal right. Therefore, *Plaintiffs do not possess a constitutionally*

protected property interest in their licenses to engage in pari-mutuel dog racing." (emphasis added) (citations omitted)).

It is well-established that permits and licenses to operate taxicabs are privileges created by the government. *Hamid v. Metro Limo, Inc.*, 619 So. 2d 321, 322 (Fla. 3d DCA 1993) ("A taxicab is a common carrier. The right to operate common carriers is not an inherent right, but a mere privilege. The privilege can be acquired only by permit, license, or franchise emanating from the governmental unit." (citations omitted)); *Hartman Transp., Inc. v. Bevis*, 293 So. 2d 37, 40 (Fla. 1974); *Riley v. Lawson*, 143 So. 619, 622 (Fla. 1932); *see also State ex rel. Hutton v. City of Baton Rouge*, 47 So. 2d 665, 668 (La. 1950) ("A certificate of public convenience and necessity is in the nature of a personal privilege or license, which may be amended or revoked by the power authorized to issue it, and the holder does not acquire a property right."). This privilege is a creature of statute; as such, any value in the medallions that conferred the privilege of participating in the taxicab business in Hillsborough County was derived from the statutes which created the medallions and the regulatory scheme governing the PTC.

The fact that the legislature declared PTC medallions to be transferrable personal property does not transform that which is a license or a privilege into a property interest cognizable under the Takings Clause. In other words, the "private property" *label* given to the medallions did not transform the license—something not protected by the Takings Clause—into a compensable property interest. *Cf. 145 Fisk, LLC v. Nicklas*, 986 F.3d 759, 770 (7th Cir. 2021) (recognizing that to determine whether a person has a property interest for purposes of the Due Process Clause, courts must "look behind labels" (quoting *Rebirth Christian Acad. Daycare, Inc. v. Brizzi*, 835 F.3d 742, 747–48 (7th Cir. 2016))).

In *Dennis Melancon, Inc. v. City of New Orleans*, the City of New Orleans had passed ordinances that created a regulatory framework governing the local taxicab industry. 703 F.3d 262, 265–66 (5th Cir. 2012). Like the special legislation in this case, the ordinances required taxicab operators to obtain one of the limited number of certificates of public necessity and convenience (called CPNCs) to provide taxi services in the City. *See id.* at 266. "As a result of this limited supply, and because the City permitted CPNC holders to transfer their certificates for consideration, a secondary

market developed for the exchange of CPNCs." *Id.* Like the special legislation in this case, "all CPNC transfers required approval by the City" and the governing ordinances "provided that such approval would be granted upon the transferee's completion of various City-imposed requirements." *Id.* The City's original regulatory framework was silent regarding whether CPNCs were a "privileges," "rights," "property," or something else.

CPNC holders filed lawsuits after the City enacted ordinances amending the regulatory framework. In one new ordinance, the City expressly provided that "CPNCs are *privileges* and not rights." *Id.* (emphasis added). Other new ordinances made the City's approval of transfers discretionary rather than mandatory and prohibited transfers of CPNCs during suspension and revocation proceedings. *Id.* In the lawsuits, the CPNC holders argued that the amendments to the regulatory framework constituted a regulatory taking without just compensation. *Id.* The Fifth Circuit Court of Appeals reversed a preliminary injunction entered by the district court, concluding that the CPNC holders had not established a substantial likelihood of success on the merits because they did not

possess a property interest in the CPNCs that was protected by the Takings Clause:

> To be sure, as Plaintiffs argue, the City traditionally has permitted CPNC holders to transfer their certificates for consideration. By so doing, the City tacitly has contributed to the development of a secondary market wherein CPNCs historically have attained significant value. This does not, however, change our understanding of the fact that CPNC holders merely possess a "*license* to participate in the highly regulated taxicab market [that] is subject to regulatory change."

Id. at 273 (alteration in original) (emphasis in original) (quoting *Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis*, 572 F.3d 502, 509 (8th Cir. 2009)).

> *[W]hatever interest Plaintiffs hold in their CPNCs is the product of a regulatory scheme that also vests the City with broad discretion to alter or extinguish that interest.* Indeed, although Plaintiffs allege that the April 2012 amendment . . . makes discretionary the previously mandatory transfer approval process, we note that even under the prior version of the ordinance, the City retained the right to impose various preapproval requirements. In other words, even under the previous version of the ordinance, *a transferee's ability to obtain a CPNC was bounded by the City's regulatory framework—a framework that was subject to further change*. . . .
>
> . . . Although it is true that a secondary market has developed based on the transferability of CPNCs, as we have explained, *any resulting interest Plaintiffs hold in their CPNCs has emerged from a regulatory framework that itself allows the City to limit or revoke that interest. Such an interest does not fall within the ambit of a*

> *constitutionally protected property right*, for it amounts to no more than a unilateral expectation that the City's regulation would not disrupt the secondary market value of CPNCs.

Id. at 274 (citation omitted) (emphasis added).

Unlike the 2012 special legislation expressly designating PTC medallions in this case as "private property," the original ordinances in *Dennis Melancon* did not include such a designation and were silent regarding their property status until the ordinance amendment expressly providing that CPNCs were "privileges not rights" precipitated the lawsuit from which the *Dennis Melancon* appeal was taken. Nonetheless, despite that dissimilarity, the reasoning of *Dennis Melancon* provides apt guidance for assessing the claims of the Taxicab Companies in this case, whose only interest in their medallions is the product of the regulatory scheme created by the legislature in the special legislation governing the PTC. *See id.* at 273. This regulatory scheme was subject to change—indeed, the scheme had been altered and amended by special legislation and PTC rules several times since the legislature created it in 1976. Ch. 83-423; ch. 2001-299; ch. 2012-247; *see Dennis Melancon*, 703 F.3d at 273–74 (citing *Minneapolis Taxi*

Owners, 572 F.3d at 509); *Ill. Transp. Trade Ass'n v. City of Chicago*, 839 F.3d 594, 599 (7th Cir. 2016) ("A 'legislature, having created a statutory entitlement, is not precluded from altering or even eliminating the entitlement by later legislation.' " (quoting *Dibble v. Quinn*, 793 F.3d 803, 809 (7th Cir. 2015))).

The fact that the legislature declared that medallions were the private property of medallion holders and granted them the ability to transfer their medallions—subject always to the regulation of the PTC—does not transform a medallion from a license into a property interest protected by the Takings Clause; rather, the legislature always retained the power to change or abolish the regulatory framework that created the Taxicab Companies' medallions. *See Dennis Melancon*, 703 F.3d at 273–74; *see also Ill. Transp. Trade Ass'n*, 839 F. 3d at 599 (recognizing that the legislature's decision to deregulate or amend existing regulations "is a legally permissible choice" that did not run afoul the Takings Clause). By simply pronouncing that a government license or benefit is "private property," a legislature does not thereby *create* compensable property that gives rise to a Takings claim *ex nihilo*. *Cf. Ill. Transp. Trade Ass'n*, 839 F.3d at 599. While future legislatures are required

to give faith to promises made by previous legislatures or state agencies in contracts, *cf. Scott v. Williams*, 107 So. 3d 379, 385 (Fla. 2013), the legislature did not make a promise or a contract with the medallion holders by enacting the 2012 special legislation. Instead, the legislature was regulating the taxicab industry. Future legislatures are free to amend or abolish regulatory frameworks established by their predecessors; doing so does not necessarily give rise to a Takings Clause claim. *See Ill. Transp. Trade Ass'n*, 839 F.3d at 599.

The dissent and Taxicab Companies rely implicitly on the premise that once a legislature has affixed the "private property" label to a set of statutorily created rights and privileges, all subsequent legislatures—and courts—must agree that the medallions were and are property subject to the Takings Clause and that medallion holders must be compensated if and when future legislative amendments eliminate or reduce the value of their rights or privileges. If governing entities did have prospective power over their successors to create such "property" that if abolished or altered by a future legislature would give rise to a Takings Clause claim, the government would be required to "regulate by *purchase*."

See Andrus v. Allard, 444 U.S. 51, 65 (1979) ("[G]overnment regulation . . . involves the adjustment of rights for the public good . . . [which o]ften . . . curtails some potential for the use or economic exploitation of private property. To require compensation in all such circumstances would effectively compel the government to regulate by *purchase*." (emphasis in original)). But they do not; the meaning of the constitution—including the Takings Clause—is the meaning of its language in context, and that is not subject to the whim of legislative bodies any more than it is subject to the whim of judicial officers. *See Advisory Op. to Governor re Implementation of Amend. 4, The Voting Restoration Amend.*, 288 So. 3d 1070, 1078 (Fla. 2020) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))).

The Taxicab Companies have argued that the legislature's pronouncement that the medallions are "private property" was more than a mere designation to define the parameters of transferability; rather, they contend, it created something owned by the designees, and when the legislature abolished the PTC and repealed chapter

2012-247, the legislature had taken some *thing* from them for which they were owed compensation under the Takings Clause. To the contrary, the medallions are effectively nothing more than a labelled status that provided a market advantage by virtue of the exclusivity caused by their scarcity. That exclusivity is not a thing that can be owned by an individual for which a government must compensate them under the Takings Clause; it is merely a consequence of the regulatory framework in a highly regulated industry in which participants have no expectation of the maintenance of the status quo. *See Dennis Melancon*, 703 F. 3d at 273–74 (concluding that CPNC holders merely possessed a "*license* to participate in the highly regulated taxicab market" and that "whatever interest Plaintiffs h[e]ld in their CPNCs [wa]s the product of a regulatory scheme that also vest[ed] the City with broad discretion to alter or extinguish that interest" (emphasis in original)).

We agree with our dissenting colleague that statutory language must be given its plain and ordinary meaning and that courts should not treat words or phrases as mere surplusage. *See Alachua County v. Watson*, 333 So. 3d 162, 169 (Fla. 2022) (quoting *Niz-*

Chavez v. Garland, 141 S. Ct. 1474, 1480 (2021)). However, the assertion that the majority is not giving effect to the phrase "private property" and according it its ordinary meaning is based on an unsupported premise—that the ordinary meaning of the words "private property" necessarily includes compensability under the Takings Clause. In order to conclude that the plain meaning of "private property" requires compensation under the Takings Clause, we must infer something from that phrase that is not apparent from the language in the context of the 2012 special legislation—that the phrase necessarily conveys that the property is subject to compensation under the Takings Clause. Rejecting that premise neither fails to give effect to the phrase "private property" nor denies it its ordinary meaning—a meaning that does not in and of itself answer the question of whether it is compensable under the constitution. *See, e.g.*, *Andrus*, 444 U.S. at 65–66 ("[T]he denial of one traditional property right does not always amount to a taking. At least where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety."); *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, 1075 (11th Cir. 1996) ("Corn

correctly notes that the property rights protected by the Fifth Amendment are created and defined by state law. He errs, however, in suggesting that the Fifth Amendment requires the payment of just compensation for every deprivation of a right recognized by state law. 'Property' as used in the Just Compensation Clause is defined much more narrowly than in the due process clauses. Thus, while certain property interests may not be taken without due process, they may be taken without paying just compensation." (citations omitted) (first citing *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1030 (1992); then citing *Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1104 (7th Cir. 1995); and then citing *Pro-Eco, Inc. v. Bd. of Comm'rs of Jay Cnty.*, 57 F.3d 505, 511 n.6 (7th Cir. 1995))).

Because not all property interests are compensable under the Takings Clause, the dissent and the Taxicab Companies' conclusion relies upon a *non sequitur* that labelling something "private property" *ipso facto* makes it compensable under the Takings Clause. The pivotal question is what the *constitution* means when *it* uses the term "property"—and whether the interest created and labeled "property" by the 2012 special legislation falls within that

meaning. To resolve this case, we must determine whether this property interest—whatever the Taxicab Companies *owned* when they were granted medallions—is the type of property interest protected by the Takings Clause, an endeavor that requires us to construe the word "property" as it is used in that clause, because the word "property" in the 2012 special legislation does not answer that question. *See, e.g. Andrus*, 444 U.S. at 65–66; *Corn*, 95 F.3d at 1075.

The dissent is necessarily construing the term "property" in the constitution by concluding that the Takings Clause requires compensation for the elimination of any right or privilege to which the legislature affixes the label "private property." That is an expansive understanding of the word "property" for purposes of the Takings Clause that is neither supported by case law nor compelled by the language of the constitution. To support this notion, the dissent points out that the constitution itself does not define the term "property" and that "[p]roperty interests . . . are not created by the Constitution" but instead "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Ruckelshaus*, 467 U.S. at

1001 (alteration in original) (quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)). However, this does not compel the premise essential to the Taxicab Companies' and our dissenting colleague's argument—that property compensable under the Takings Clause necessarily includes interests that do not exist independently from the government regulation that created them so long as the regulation labels them "private property." The case law upon which our dissenting colleague relies does not support such a premise but rather the opposite.

While language in published Takings Clause precedent describes property rights or interests for purposes of the Takings Clause as being created, defined, or determined by state law, *see, e.g.*, *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2075–76 (2021); *Ruckelshaus*, 467 U.S. at 1001, the *property itself* is not created by or derived from state law. Rather, the property itself preexisted the regulations and laws defining a person's property interest in that thing. In *Cedar Point*, for example, the United States Supreme Court concluded that a California law that required agricultural employers to open their real property to union organizers for up to three hours per day, 120 days per year,

constituted a taking. *Cedar Point*, 141 S. Ct. at 2069, 2080. The Court explained that "[a]s a general matter, . . . property rights protected by the Takings Clause are creatures of state law." *Id.* at 2075–76. While the agricultural employers' right to exclude others from their real property was defined by state law, the property itself—the real property—was not created by state law. The agricultural employers obtained the property independently of the state law regulating and defining individuals' interests and rights with respect to real property. *See id.*

In *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 159 (1998), the Supreme Court held that interest income generated on Interest on Lawyers Trust Accounts was the client's property for purposes of the Takings Clause. The Court explained that "[b]ecause the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.' " *Id.* at 164 (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)). However, as in *Cedar Point*, the regulation did not *create* the property—interest income generated from the account itself was not

created by state law; it existed independently of the state regulation requiring the interest be paid to foundations that funded legal services for low-income individuals. *See id.*

In *Ruckelshaus*, the Supreme Court held that pesticide companies had a property interest in health, safety, and environmental data provided to the Environmental Protection Agency (EPA) because the data constituted a trade secret which is a type of intangible property protected by the Takings Clause. *Ruckelshaus*, 467 U.S. at 1003–04. The Court reaffirmed the "basic axiom that ' "[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." ' " *Id.* at 1001 (alteration in original) (quoting *Webb's Fabulous Pharmacies*, 449 U.S. at 161). While the data the companies provided to the EPA may have been compiled as the result of a government regulation, the property at issue—pesticide companies' trade secrets—was not created by the government regulation. Rather, that data and its value was obtained or generated by the companies, independent of any law protecting them as trade secrets or the regulation that required the

pesticide companies to compile and provide the information to the EPA.

In regulatory takings cases, the property owners typically have had a *preexisting* property interest that predated the regulation at issue, and the regulation erodes or eliminates that property's value or beneficial use. *See, e.g.*, *Andrus*, 444 U.S. at 54 (eagle feathers); *Scott v. Galaxy Fireworks, Inc.*, 111 So. 3d 898, 898 (Fla. 2d DCA 2012) (fireworks). In other words, the plaintiffs *already owned something* that the government regulated in such a way as to diminish or destroy its value. State law might very well acknowledge, recognize, or even define the boundaries of such property interest, *see, e.g.*, *Cedar Point*, 141 S. Ct. at 2075–76; *Ruckelshaus*, 467 U.S. at 1001, but the *thing* being taken is property that itself exists independent of the law that regulates it.

Here, the property interest in the medallions *did not exist* prior to the regulation of the taxicab industry; rather, the 2012 special legislation created an interest that would not otherwise exist without it. *See* ch. 2012-247(2). As such, there was no property interest for subsequent regulation to *take*. Unlike the real property in *Cedar Point* or the trade secrets in *Ruckelshaus*, but for the

special legislation creating and governing the PTC, there would be no medallions at all. The regulatory scheme might have given rise to and then eliminated interests held by regulated actors, but the regulation cannot be said to have taken property that it did not create in the first place—property that would not have existed *but for* the very regulatory scheme the amendment or elimination of which caused the property interest to diminish or cease to exist. *Cf. Dennis Melancon*, 703 F.3d at 274 ("[W]hatever interest Plaintiffs hold in their CPNCs is the product of a regulatory scheme that also vests the City with broad discretion to alter or extinguish that interest. . . . [A]ny resulting interest Plaintiffs hold in their CPNCs has emerged from a regulatory framework that itself allows the city to limit or revoke that interest. Such an interest does not fall within the ambit of a constitutionally protected property right . . . .").

Rather than taking compensable property from the interest holders, the government created circumstances under which individuals could choose to avail themselves of a benefit created by the regulation. However, in doing so, participating individuals subject themselves to the risk that such regulation could alter or eliminate whatever interest the regulation had previously conferred

subject to the vicissitudes of the political and administrative processes by which such interests can be created, altered, destroyed, and resurrected *ad infinitum*. *Cf. id.*

The government often creates privileges. However, with the power to create comes the power to modify and destroy. *Cf. Fla. Carry, Inc. v. Univ. of Fla.*, 180 So. 3d 137, 146 (Fla. 1st DCA 2015); *Ill. Transp. Trade Ass'n*, 839 F.3d at 599. It does not follow that a person retains a perpetual property interest in an ephemeral privilege created by the government. *Cf. Dennis Melancon*, 703 F.3d at 272. "Were the rule otherwise, 'statutes would be ratchets, creating rights that could never be retracted or even modified without buying off the groups upon which the rights had been conferred.' " *Ill. Transp. Trade Ass'n*, 839 F.3d at 599 (quoting *Dibble*, 793 F.3d at 809).

By way of analogy, the government has exercised its power to create and regulate public assistance benefits pursuant to the applicable statutes. *Cf. Cedar Point*, 141 S. Ct. at 2075–76 ("[P]roperty rights . . . are creatures of state law."); *see also Corn*, 95 F.3d at 1075 ("[P]roperty rights protected by the Fifth Amendment are created and defined by state law."). A person has a cognizable

property interest for purposes of the Due Process Clause in continued receipt of public assistance benefits if he or she continues to qualify for them based on the statutory requirements. *See Goldberg v. Kelly*, 397 U.S. 254, 261–62 (1970). Likewise, as pointed out by the State, a public employee may establish a property right in continued employment with a government agency for purposes of the Due Process Clause. *See Dahly v. Dep't of Child. & Fam. Servs.*, 876 So. 2d 1245, 1250 (Fla. 2d DCA 2004) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985)). However, if a subsequent legislative enactment were to eliminate the public assistance or government job, it would not follow that the erstwhile beneficiaries or former public employees could then claim a cognizable property interest for purposes of the Takings Clause. *Cf. Corn*, 95 F.3d at 1075 ("[W]hile certain property interests may not be taken without due process, they may be taken without paying just compensation."). Such property right in public assistance was merely a status of eligibility for such benefits that was always dependent upon the government's continuing authorization of the benefits and the privilege to receive them. *Cf. Dennis Melancon*, 703 F.3d at 272, 274. Likewise, a public

employee's property right was always dependent upon the continued existence of the position funded by the legislature, not to mention the continued existence of the government agency itself. *See id.*; *cf.* ch. 2011-142, Laws of Fla. (repealing the statutes creating the Department of Community Affairs and other agencies). Similarly, the Taxicab Companies' property interest in their medallions was not one protected under the Takings Clause; rather, it was a status of eligibility established by special legislation and always dependent upon the continued existence of the regulatory framework created by the State. *See Dennis Melancon*, 703 F.3d at 272, 274.

In contrast with the governments' reliance on the Fifth Circuit's reasoning in *Dennis Melancon*, the Taxicab Companies' reliance on an Illinois State appellate court case, *Boonstra v. City of Chicago*, 574 N.E.2d 689 (Ill. App. Ct. 1991), is not well-taken. In *Boonstra*, the court held that "the taxicab license and its assignability is a constitutionally protected property interest pursuant to the Fourteenth Amendment." *Id.* at 695. While recognizing that the government has the right to amend existing legislation and elect not to confer a property interest as it chooses,

the court concluded that "[a] legislative body . . . may not authorize the deprivation of such an interest, once conferred, without appropriate constitutional safeguards," including the "prohibition against affecting vested property rights without due process and just compensation." *Id.* (concluding that "when the City of Chicago amended the taxicab ordinance in 1982 by summarily precluding those persons already having an assignable property interest in taxicab licenses from being able to assign their property interests, the City of Chicago's action constituted a taking of property without due process and without just compensation"). However, in determining whether the plaintiff had alleged a constitutionally protected interest in the taxicab license, the court in *Boonstra* relied exclusively on cases in which the United States Supreme Court had concluded that the plaintiffs had a constitutionally protected property right *for the purposes of the Due Process Clause*. *Id.* at 694–95; *see Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Barry v. Barchi*, 443 U.S. 55 (1979); *Matthews v. Eldridge*, 424 U.S. 319 (1976); *Bell v. Burson*, 402 U.S. 535 (1971); *Goldberg*, 397 U.S. 254.

This court respectfully disagrees with its sister state court's decision in *Boonstra*. Presuming only for the sake of analysis that the Taxicab Companies in this case might have had a property interest in their medallions for purposes of the Due Process Clause, it does not follow that such an interest is cognizable under the Takings Clause such that future legislatures cannot eliminate it without buying off those who had availed themselves of a status labeled "property" by a previous legislature. *Cf. Ill. Transp. Trade Ass'n*, 839 F.3d at 599 (reasoning that if the court were to conclude that medallion holders had a property right in market exclusivity by virtue of their medallions for purposes of the Takings Clause, the Legislature would be precluded from amending and abolishing privileges and entitlements created by statute, causing statutes to become "ratchets, creating rights that could never be retracted or even modified without buying off the groups upon which the rights had been conferred" (quoting *Dibble*, 793 F.3d at 809)).[5]

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[5] The Taxicab Companies also noted that *Boonstra* had been cited favorably by the federal Seventh Circuit Court of Appeals in *Illinois Transportation Trade Ass'n*. *See Ill. Transp. Trade Ass'n*, 839 F.3d at 596 (citing *Boonstra*, 574 N.E.2d at 694–95). Notably, the proposition for which the Seventh Circuit cited *Boonstra* is that "[c]onfiscation of the medallions would amount to confiscation of

The Taxicab Companies have not sufficiently alleged a taking by the State or by the County because they have no property interest in the medallions cognizable under the Takings Clause. Any interest the Taxicab Companies had in their medallions "amount[ed] to no more than a unilateral expectation" in the persistence of the "regulatory framework" from which it "emerged" and which "itself allow[ed] the [State] to limit or revoke that interest." *Dennis Melancon*, 703 F.3d at 274.

We affirm the trial court's judgment in favor of the County. We reverse the portion of the trial court's order denying the State's motion to dismiss. We remand for further proceedings consistent with this opinion.

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the taxis: no medallion, no right to own a taxi." *Id.* However, *Boonstra* was not concerned with the physical confiscation of taxicab medallions; rather, the Illinois appellate court concluded that the medallion holders had a property right in the continued assignability of their medallions which the City of Chicago could not eliminate without just compensation. *Boonstra*, 574 N.E.2d at 694–95. The Seventh Circuit's conclusions that "[a]ll that the City gives taxi-medallion owners is the right to operate taxicabs in Chicago" and that legislatures may alter and eliminate statutory entitlements without running afoul of the Takings Clause arguably conflict with the *Boonstra* court's holdings. *Compare Ill. Transp. Trade Ass'n*, 839 F.3d at 597, 599, *with Boonstra*, 574 N.E.2d at 694–95.

Affirmed (as to Case Number 2D20-3326). Reversed and remanded (as to Case Number 2D20-3432).

LABRIT, J., Concurs.

LUCAS, J., concurring in part and dissenting in part.

"Any certificate of public convenience and necessity for taxicabs or any taxicab permit . . . is the private property of the holder of such certificate or permit." Ch. 2012-247, Laws of Fla.

Were it not for this legislative declaration, I might be inclined to agree with much of the majority's analysis, which is quite thorough and thoughtful. But I believe these taxicab medallions, which for more than a quarter of a century have been treated as private property, were what the legislature decreed them to be: private property. So, while I concur with the court's decision to affirm the summary judgment in favor of the County, I am of the view that the State's abrogation of this property was potentially a taking for which the appellants could be entitled to full compensation under Article X, section 6(a) of the Florida Constitution.[6] Accordingly, I respectfully dissent.

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[6] The State's ruling came about through a motion to dismiss. I question the procedural propriety of using such a motion to resolve

When the government or one of its agencies "has effectively taken private property without a formal exercise of the power of eminent domain, a cause of action for inverse condemnation will lie." *See Rubano v. Dep't of Transp.*, 656 So. 2d 1264, 1266 (Fla. 1995) (citing *Schick v. Fla. Dep't of Agric.*, 504 So. 2d 1318, 1319 (Fla. 1st DCA 1987)). But as the majority rightly notes, before there can be a "taking" there must be "property" that the government has allegedly taken. In many cases, such as an appropriation of one's land or personal property, the preliminary requisite of a cognizable interest in property will be readily apparent. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 324 (2002) ("[P]hysical appropriations are relatively rare, easily identified, and usually represent a greater affront to individual property rights.").

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what was, in essence, a factual inquiry, *see Dep't of Agric. & Consumer Servs. v. Mid-Fla. Growers, Inc.*, 521 So. 2d 101, 104 (Fla. 1988) ("[W]hether regulatory action of a public body amounts to a taking must be determined from the facts of each case." (quoting *State, Dep't of Agric. & Consumer Servs. v. Mid-Fla. Growers, Inc.*, 505 So. 2d 592, 593 (Fla. 2d DCA 1987))), but the appellants have not argued that the circuit court erred in its use of the State's chosen procedural vehicle to resolve the issue. I suspect the parties were more concerned with the substantive answer to the question of whether the medallions were property, the issue to which I will confine this opinion.

In other cases, it won't. In the case at bar, the State contends that the taxicab medallions, notwithstanding chapter 2012-247, Laws of Florida, were more "license" than "property" and, as such, not worthy of constitutional protection. But the distinction between a mere license and a protected property right, such as it is, can be subtle because the law has recognized that sometimes a license can be deemed property. How does a court determine when a license deserves the recognition and constitutional protections of being property?

The majority broaches this issue through the obverse; that is, the court labors to define property by analyzing what property isn't to then conclude that no property was taken in this case. According to the majority, "[p]rivileges and licenses are not constitutionally protected property interests for purposes of the Takings Clause." Since the taxi medallions are, in their essence, government-regulated licenses, they cannot be property. In my opinion, that is a categorical bar that both goes too far (in terms of what the case law actually holds) and not far enough (in terms of what the constitutional analysis requires us to consider). A better point of departure for this inquiry would have been to address what

kinds of property interests the constitution protects. So that is where I will begin.

I.

In *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984), the Supreme Court explained that "[p]roperty interests," for purposes of the Takings Clause of the Fifth Amendment, "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." (alteration in original) (quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980)). Recognizing that "property" in the modern era can take a myriad of forms—and that the sources of its creation can be varied—the federal courts have viewed the term expansively. *See, e.g.*, *Monsanto*, 467 U.S. at 1003 (trade secret of pesticide ingredients was protected property interests); *Armstrong v. United States*, 364 U.S. 40, 44 (1960) (materialman's lien under Maine law was protected under the Fifth Amendment); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 596-602 (1935) (real estate lien constituted protected property); *Lynch v. United States*, 292 U.S. 571, 579 (1934) ("Valid contracts are property . . . . Rights against

the United States arising out of a contract with it are protected by the Fifth Amendment.").

Addressing the question of whether President Nixon held a Fifth Amendment property right in his presidential papers and tape recordings (in the face of a congressional act that would have authorized the Administrator of General Services to retain control over them), the D.C. Circuit summarized how property should be understood for purposes of the Fifth Amendment:

> As an initial matter, this court must determine whether Mr. Nixon had a property interest that warrants protection under the Fifth Amendment. While the precise contours of the term "property" are not well delineated, it is settled law that the Constitution does not create property interests. Rather, "property" is a creature of independent origins. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Tarpeh-Doe v. United States*, 904 F.2d 719, 723 (D.C. Cir. 1990). The essential character of property is that it is made up of mutually reinforcing understandings that are sufficiently well grounded to support a claim of entitlement. *See Kaiser Aetna v. United States*, 444 U.S. 164, 179 (1979) (property consists of recognized expectancies); *Perry v. Sindermann*, 408 U.S. 593, 601 (1972) (property involves mutually explicit understandings); *Hall v. Ford*, 856 F.2d 255, 265 (D.C. Cir. 1988) (property is an expectation based on rules of understandings). These mutually reinforcing understandings can arise in myriad ways. For instance, state law may create entitlements through express or implied agreements, *see, e.g., Kaiser Aetna*, 444 U.S. at 179; *Roth*, 408 U.S. at 577-78; *Perry v.*

> *Sindermann*, 408 U.S. at 602 ("rules and understandings" that justified a legal entitlement); and property interests also may be created or reinforced through uniform custom and practice, *United States v. Arredondo*, 31 U.S. (6 Pet.) 691, 714 (1832) ("There is [a] source of law in all governments, usage, custom, which is always presumed to have been adopted with the consent of those who may be affected by it.").

Nixon v. United States, 978 F.2d 1269, 1275-76 (D.C. Cir. 1992) (footnotes omitted).

The same definitional breadth is found in our state's jurisprudence as well. "The definition of 'property' in condemnation cases is sufficiently broad to extend to intangible and incorporeal rights, such as contractual obligations and leasehold interests." *Pinellas County v. Brown*, 450 So. 2d 240, 242 (Fla. 2d DCA 1984); *see also TLC Props., Inc. v. Dep't of Transp.*, 292 So. 3d 10, 15 (Fla. 1st DCA 2020) ("[T]he cohort of compensable property interests in Florida has expanded to include leaseholds, easements, and personal property, as well as incorporeal hereditaments such as contracts."), *reh'g denied* (Mar. 30, 2020), *review denied*, SC20-604, 2020 WL 6040207 (Fla. Oct. 12, 2020); *State v. Basford*, 119 So. 3d 478, 482 (Fla. 1st DCA 2013) (observing that "real property, tangible property, and intangible property may be the subject of a

takings claim" (citing *Acceptance Ins. Cos. v. United States*, 583 F.3d 849, 854 (Fed. Cir. 2009))); *cf.* Philip Nichols, The Law of Eminent Domain, 67 (1917) ("Intangible property, such as choses in action, patent rights, franchises, charters or any other form of contract, are within the sweep of this sovereign authority [of eminent domain] as fully as land or other tangible property." (footnotes omitted)).

The Fifth Amendment demands a wide, searching sweep for ascertaining property interests because the wellsprings of property law are so many and varied.[7] Liberality is inherent to the inquiry.

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[7] Indeed, in the Lockean tradition, property transcends positive law altogether as a natural right. *See* John Locke, Second Treatise of Government, § 44 (1689) ("From all which it is evident, that though the things of nature are given in common, yet man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property . . . ."); *see also* 1 WILLIAM BLACKSTONE, COMMENTARIES * 9 (1753) ("Property, both in lands and movables, being thus originally acquired by the first taker, which taking amounts to a declaration that he intends to appropriate the thing to his own use, it remains in him, by the principles of universal law . . . ."). Our state constitution recognizes an "inalienable right" to "acquire, possess and protect property." Art. I, § 2, Fla. Const. But positive law, such as legislation, has a role to play in discerning this natural right. *Cf.* William Michael Treanor, The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment, 94 Yale L. J. 694, 710 (1985) ("Although Madison did not believe property was a natural right—it depended for its existence on positive law—its protection was of critical importance." (footnote omitted)). In a sense, ascribing the proper role of positive law to the right of

That is not to say it is boundless. As the Supreme Court remarked in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124-25 (1978),

> this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values. Exercises of the taxing power are one obvious example. A second are the decisions in which this Court has dismissed "taking" challenges on the ground that, while the challenged government action caused economic harm, it did not interfere with interests that were sufficiently bound up with the reasonable expectations of the claimant to constitute "property" for Fifth Amendment purposes.

(citing *United States v. Willow River Power Co.*, 324 U.S. 499 (1945) (interest in high-water level of river for runoff for tailwaters to maintain power head is not property); *United States v. Chandler-Dunbar Water Power Co.*, 229 U.S. 53 (1913) (no property interest can exist in navigable waters)). But if all that is necessary to create a protected property right under the Fifth Amendment are "mutually reinforcing understandings that are sufficiently well grounded" in state law, *Nixon*, 978 F.2d at 1275, and if state law

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property may be what the majority and I find ourselves in disagreement over.

can express those understandings "through express or implied agreements" or "uniform custom and practice," *id.*, our search for the outer boundaries of what constitutes property should be at least as wide as the potential origins for what can create a property interest.

II.

With that in mind, it is curious for the majority to conclude that a long-standing, government-encouraged secondary market for these taxicab medallions[8] coupled with *an express legislative declaration that the taxicab medallions were private property* somehow fell short of the mark. Candidly, I can't imagine positive law could be any plainer in its intent to acknowledge a cognizable

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[8] "Long-standing" may be an understatement when one considers the broader history of this kind of licensing regime. Legislative acts limiting the number of licenses for hired conveyances can be found as far back as the English Interregnum. *See, e.g., June 1654: An Ordinance for the Regulation of Hackney-Coachmen in London and Places Adjacent*, Acts and Ordinances of the Interregnum, 1642-1660, BRITISH HISTORY ONLINE, http://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp922-924 (capping the number of persons allowed to operate hackney coaches in "London, Westminster, and places thereabouts" at 200, and requiring each driver to pay a fee of 40 shillings "towards raising a Stock, and for defraying the common Charges of said Company").

property right without hitting the reader on the nose. *See Alachua County v. Watson*, 333 So. 3d 162, 169 (Fla. 2022) ("[W]hen called on to resolve a dispute over a statute's meaning, [we] normally seek[] to afford the law's terms their ordinary meaning at the time [the legislature] adopted them." (second, third, and fourth alterations in original) (quoting *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021))); *Money v. Home Performance All., Inc.*, 313 So. 3d 783, 786 (Fla. 2d DCA 2021) ("No one can dispute that '[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.' " (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984))).

Nevertheless, the majority elides chapter 2012-247's explicit directive—to bestow the constitutional dignity of "property" onto these taxicab medallions—with two points, to which I will now turn.

A.

First, the majority opines that licenses and privileges (which it relegates the taxicab medallions to) are not protected property rights. In my view, that is an overstatement. On closer reading, the

holdings the majority has marshalled, as well as the case law in general, offer a more nuanced consideration of licenses and privileges under the Fifth Amendment.

The principal case relied upon by the majority is *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262 (5th Cir. 2012), a case that does bear a number of similarities to the case at bar. In *Dennis Melancon*, the City of New Orleans, like Hillsborough County, had created a closed market for taxicab operations, requiring taxi operators to work under one of the limited certificates of public necessity and convenience the City issued. These certificates could be transferred, which, like in the case before us, evolved over time into a secondary market for taxicab certificates. The Fifth Circuit took a close look at the "mix of legislation, judicial precedent, and custom" surrounding these certificates but concluded that "the City historically has viewed and treated a CPNC as a privilege rather than a form of constitutionally protected property." *Id.* at 270, 272. Thus, the City's subsequent curtailment of the certificates and imposition of new requirements on taxi operators could not constitute a taking.

Despite the similarities, there are two distinctions in *Dennis Melancon* from the case at bar that strike me as glaring. First and foremost, as the court noted, the City's legislative body had expressly declared in an enacted ordinance that the certificates were merely "privileges." *Id.* at 273 ("Indeed, section 162-59 expressly states that CPNCs are *privileges*."). In the case before us, our state legislature expressed the direct contrary by decreeing the taxi medallions were "private property." If, as I believe, a legislative pronouncement such as chapter 2012-247 can constitute part of an "express or implied agreement," *Nixon*, 978 F.2d at 1276, giving rise to a property interest under the Fifth Amendment, then the ordinance in *Dennis Melancon* actually represents a counterfactual example, one that, by contrast, should lead us to conclude that the medallions in this case are indeed, as the statute says, "private property."

Second, the Fifth Circuit noted how the City could impose various prerequisites on certificate applicants and transferees, that it could suspend or revoke a certificate and designate routes over which certificate holders could operate their vehicles, and "[p]erhaps most importantly," the court observed, "the City has the

discretion to adjust the number of CPNCs it issues." *Dennis Melancon, Inc.*, 703 F.3d at 272. Not so in the case at bar. Chapter 2012-247(4) capped the number of taxi medallions as a function of the county's population. Instead of retaining discretion over the number of medallions available, the Florida legislature enacted a level of scarcity, a classic component of private property.[9]

At most, *Dennis Melancon* should be read for the proposition that a government regulated license, which has been expressly declared a "privilege," remains just that. The court did not issue a categorical rule, as the majority seems to infer, but engaged in a careful factual analysis to conclude that the licensing regime at issue in New Orleans' "privilege" of operating taxis was not a protected property right. The case says nothing about, and therefore offers no guidance upon, a licensing regime that a state legislature has determined should be treated as "private property."

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[9] *See, e.g.*, David Hume, *An Enquiry concerning the Principles of Morals*, 35 (1777) ("For what purpose make a partition of goods, where every one has already more than enough? Why give rise to property, where there cannot possibly be any injury? Why call this object *mine*, when, upon the seizing of it by another, I need but stretch out my hand to possess myself of what is equally valuable?"); 1 WILLIAM BLACKSTONE, COMMENTARIES * 8 (1753) ("Necessity begat property . . . .").

Neither does *Marine One, Inc. v. Manatee County*, 898 F.2d 1490 (11th Cir. 1990). In *Marine One*, the Eleventh Circuit confronted the issue of whether revoking a development permit could constitute a taking. The court did not hold that the intangible privilege of a permit was not, categorically, a protectable property interest. To the contrary, the court took pains to distinguish cases in which a permit could be considered property (when the permit was issued on private lands) from the case before the court (which concerned public, submerged lands). *Id.* at 1492-93. Addressing that narrow context, the court observed that "federal and other state cases stand for the proposition that permits to perform activities on public land . . . are mere *licenses* whose revocation cannot rise to the level of a Fifth Amendment taking." *Id.* (first and seconded emphases added).

Suffice to say, not one of the cases cited in the majority's opinion confront the question we have here: whether an express legislative recognition of a long-standing, limited-supply licensing regime constitutes "private property." And none of those cases can be interpreted for the broad sweep the majority has employed: that intangible rights in governmental licensures cannot be deemed

worthy of protection under the Takings Clause.[10] The majority goes too far, then, when it makes a categorical pronouncement that licenses cannot be property because such an analysis falls short of

[10] I would point out that intellectual property, a robust segment of our nation's economy, turns upon the trade of exclusive government-protected (and regulated) licenses—and has long been recognized as property for purposes of the Takings Clause. *See Monsanto*, 467 U.S. at 1003 (trade secret arising under Missouri state law protected under the Fifth Amendment); *James v. Campbell*, 104 U.S. 356, 357-58 (1881) ("That the government of the United States when it grants letters-patent for a new invention or discovery in the arts, confers upon the patentee an exclusive

giving property its "sufficiently broad" definitional ambit. *Brown*, 450 So. 2d at 242.[11]

The majority's approach also leaves us with a rather conspicuous quandary: what do we do with Ch. 2012-247's declaration that the medallions were private property? There were other state statutes that already furnished the ingredients to foster and encourage a secondary market for these medallions; the

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property in the patented invention which cannot be appropriated or used by the government itself, without just compensation, any more than it can appropriate or use without compensation land which has been patented to a private purchaser, we have no doubt."); *Roth v. Pritikin*, 710 F.2d 934, 939 (2d Cir. 1983) ("An interest in a copyright is a property right protected by the due process and just compensation clauses of the Constitution." (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 485 U.S. 419 (1982); *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 82 n.6 (1980))); *Zoltek Corp. v. United States*, 58 Fed. Cl. 688, 696 (Fed. Cl. 2003) ("The Federal Circuit, its predecessor court, the Court of Claims, and the U.S. Supreme Court have repeatedly recognized that patent rights are property rights. . . . 'When the government has infringed, it is deemed to have "taken" the patent license under an eminent domain theory, and compensation is the just compensation required by the fifth amendment.' " (quoting *Leesona Corp v. United States*, 599 F.2d 958, 964 (Fed. Cir. 1979))).

[11] To be clear, the property interest at stake here does not derive solely from a company's economic expectation in a licensing regime (which has now come to an end). Rather, I am taking the legislature at its word when it declared that these particular taxicab medallions were "the private property of the holder" that could be

aspects of intangible property rights were already "on the books," so to speak, before chapter 2012-247 was enacted. What, then, did chapter 2012-247 accomplish?

The majority never really answers this question. Instead, the court relegates chapter 2012-247 to an exercise of labeling.[12] "[T]he *label* given to the medallions and the power to transfer given by the Legislature did not transform the license—something not protected

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freely devised, assigned, sold, and transferred. *See* ch. 2012-247, Laws of Fla. In this respect, I find *Checker Cab Operators, Inc. v. Miami-Dade County*, 899 F.3d 908 (11th Cir. 2018) noteworthy, because the Eleventh Circuit in that case did not hold that the Dade County taxi medallion owners had no protected property interest in their medallions (which were greatly diminished in value once private rideshare companies such as Uber and Lyft were permitted to operate in their county). "It is undisputed that the Medallion Holders own an intangible property interest in their medallions," the court observed. *Id.* at 917. The issue instead was whether that intangible property interest included a right to market exclusivity. "If the [County] Code did not convey to the Medallion Holders the right to block competition in the for-hire transportation market, then the County could not have 'taken' that right and the Medallion Holders' takings claims must fail." *Id.* According to the *Checker Cab* court, there *was* a property interest in the medallions, it just didn't encompass the particular right that the class of plaintiffs were complaining about.

[12] In a sense, every act of declaring or defining is an act of labeling. That is not at all what the Seventh Circuit was cautioning against in *Rebirth Christian Academy Daycare, Inc. v. Brizzi*, 835 F.3d 742, 747-48 (7th Cir. 2016).

by the Takings Clause—into a cognizable property interest for purposes of the Takings Clause," according to the majority. But that is just another way of saying the statute was superfluous, which is not how we would ordinarily read an express, unambiguous pronouncement in a legislative enactment. *Accord State v. Bodden*, 877 So. 2d 680, 686 (Fla. 2004) ("[W]ords in a statute are not to be construed as superfluous if a reasonable construction exists that gives effect to all words."); *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002) ("[A] basic rule of statutory construction provides that the [l]egislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.").

Having explicitly recognized that an existing market of taxi medallions constituted intangible personal property, a future legislature was, of course, free to change its mind. But it cannot change the Takings Clause's mandate if what it created was property.

B.

Which leads me to the second point the majority relies upon, the regnant supremacy of a current legislature over its

predecessors' enactments. As the majority notes, "a legislature cannot bind the hands of a future legislature when it regulates." I suppose that's a correct statement of the law, for as far as it goes.[13] But in this inquiry it doesn't take us very far.

The fact that a future legislature may amend or abolish what a prior legislature enacted does not confer authority on any legislature to abolish a constitutionally protected right. And if we interpret what an earlier legislature enacted as an express acknowledgement of an extant constitutionally protected property right (which, in this case, I think we must) then no subsequent legislature could abolish that property right without complying with the constitutional requirement to compensate for its value. *See Fla. Dep't of Agric. & Consumer Servs. v. Dolliver*, 283 So. 3d 953, 960 (Fla. 2d DCA 2019) ("No legislative pronouncement may thwart the

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[13] To my mind, it's not clear that this proscription can be appropriately employed as a tool of statutory construction, which is essentially how the majority is using it. *Cf.* J. G. Sutherland, Statutes and Statutory Construction, 696 (1904) ("[Rules of statutory construction] are a part of the law of the land equally with the statutes themselves, and not much less important. The function of such interpretation unrestrained by settled rules would introduce great uncertainty, and would involve a power virtually legislative.").

implementation of a constitutional mandate—particularly where, as is typically the case and here, the constitutional provision is self-executing."); *Yorty v. Stone*, 259 So. 2d 146, 150 (Fla. 1972) (Ervin, J., dissenting) ("Constitutional guaranties are imperatives that do not yield with the passing vagaries of statutes.").[14]

Indeed, by the lights of the majority's reading of the "no legislature can bind a future legislature" proscription, we would find ourselves in a place where no constitutional right could ever be memorialized or secured by a legislative act. I very much doubt that's what the Florida Supreme Court had in mind when it held that "[a] legislature may not bind the hands of future legislatures *by*

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[14] What the majority suggests here is somewhat troubling if it were applied to other contexts. For example, could the notice and hearing required in a Baker Act proceeding under sections 394.4599 and .467, Florida Statutes (2022), be dispensed with since the current legislature could, in theory, amend that section out of existence? Or does one's continued ownership of Greenacre rise and fall entirely on the legislative grace of the Marketable Records Title Act, §§ 712.001-.12, Florida Statutes (2022)? No. The constitutional rights those statutes help define and protect—due process and ownership of real property—would still stand and still apply irrespective of what a subsequent legislature may enact. Just because a property interest happens to be memorialized within state statutes does not mean it merits less constitutional dignity.

prohibiting amendments to statutory law." *Neu v. Miami Herald Publ'g Co.*, 462 So. 2d 821, 824 (Fla. 1985) (emphasis added).

III.

I'll conclude by acknowledging an important point raised by the majority. Governmental regulation does not "compel the government to regulate by purchase." Maj. Op. (quoting *Andrus v. Allard*, 444 U.S 51, 65 (1979)). The government regulates a lot of things. The pervasiveness of government's presence in the affairs of its citizens creates expectations, externalities, and a host of secondary and tertiary effects, sometimes foreseen, often unforeseen.

"[T]o insist on full compensation to every interest which is disproportionately burdened by a social measure dictated by efficiency would be to call a halt to the collective pursuit of efficiency." Frank I. Michelman, Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 Harv. L. Rev. 1165, 1178 (1967). Heaven forfend that the government's "collective pursuit of efficiency" should be stymied by the bother of an individual's natural right to keep the property the legislature helped create. But (sarcasm aside) it is fair to ask what

role the constitution's demand of compensation plays in modern commerce, when the government's rules are so enmeshed within so many aspects of our economic lives.

I don't profess to have a comprehensive answer to that question.[15] The constitutional text we have to work with assumes a readily understood definition of "property," a term that is, at times, both amorphous and capacious.[16] The case law (including the court's contribution today) illustrates an ongoing struggle to find the definitional boundaries of property on a case-by-case basis.

The Seventh Circuit put it about as well as it could be put: "property is what is securely and durably yours under state . . . law, as distinct from what you hold subject to so many conditions as to

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[15] Although it may be that a more dynamic application of the Takings Clause would foster a more circumspect approach to regulation when, as here, the government presumes to foster new property rights in its role as regulator.

[16] Madison, the author and chief proponent of the Just Compensation Clause, painted "property" with breathtakingly broad strokes, as "embrac[ing] everything to which a man may attach a value and have a right; and *which leaves to every one else the like advantage*." James Madison, for the *National Gazette*, March 27, 1792. *See also* Treanor, 94 Yale L. J. at 713 ("In Madison's view, then, enunciation of the just compensation principle in the Bill of Rights had extremely broad ramifications.").

make your interest meager, transitory, or uncertain." *Kim Constr. Co., Inc. v. Bd. of Trs. of Village of Mundelein*, 14 F.3d 1243, 1246 (7th Cir. 1994) (alteration in original) (quoting *Reed v. Village of Shorewood*, 704 F.2d 943 (7th Cir. 1983)).

I draw the line differently than the majority because in my view the combined effect of the statutes and ordinances at issue, the length of time that the secondary market for medallions existed, the limited supply (created by the government) of medallions, and, most importantly, the government's express recognition of a private property right, bring this unique set of facts within the ambit of the constitution's protection. The rights conferred upon the owners of these medallions were not "meager, transitory, or uncertain." *Id.* Quite the opposite.

Accordingly, I would affirm both the circuit court's judgment and its order denying the State's motion to dismiss. I would return this case below to further develop whether the State's actions amounted to a taking of the appellants' property.

Opinion subject to revision prior to official publication.