SC23-95

In the Supreme Court of Florida

GUSTAVO BOJORQUEZ, ET AL.,
Petitioners,

v.

STATE OF FLORIDA, ET AL.,
Respondents.

On Petition for Discretionary Review from
the Second District Court of Appeal
DCA No. 2D20-3432

STATE OF FLORIDA'S ANSWER BRIEF

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INTRODUCTION

The State has long prohibited operating a taxicab without State approval, also known as a "taxicab medallion." That approval historically was subject to several conditions, including that the State could abolish the medallion in its discretion.

The Legislature followed that tradition when it enacted a law establishing a medallion system in Hillsborough County. Among other things, the law expressly reserved the Legislature's right to dissolve the system. It prescribed a tightly controlled regulatory framework to ensure that taxicab operators did not endanger their passengers. And it authorized medallions on the condition that they could be revoked by the issuing entity, putting medallion holders on notice that their medallions could be extinguished.

In 2017, the Legislature exercised its right to dissolve the medallion system. That act deregulated the field at the state level, lifting existing restrictions on driving a taxicab in Hillsborough County and leaving future regulation to the County itself. The County in turn established another medallion system and required former medallion holders to apply for new medallions.

Petitioners held medallions under the system repealed in 2017. Although they have never asserted that the County denied them new medallions, they contend that the 2017 dissolution worked a taking without full compensation by extinguishing their former medallions. They theorize that a 2012 statute entitles them to compensation because it called the former medallions "private property" and established a transfer process. The Second District rejected the claim because neither of those features amounted to a "promise" that the State would never "change or abolish the [medallion] framework." A.24–25.[1]

The Second District was right. Statutes are "presumed not to create" rights that the Legislature may "retract[]" only by "buying off the groups upon which the rights ha[ve] been conferred." *See Pittman v. Chicago Bd. of Educ.*, 64 F.3d 1098, 1104 (7th Cir. 1995). To surmount that presumption, Petitioners must show that the 2012 act "unmistakabl[y]" promised that the Legislature would not abolish their medallions. *See Cranston Firefighters, IAFF Loc. 1363, AFL-CIO v. Raimondo*, 880 F.3d 44, 49 (1st Cir. 2018). They cannot meet that

[1] The abbreviation "A" refers to the appendix filed with Petitioners' jurisdictional brief.

burden, both because the 2012 act did not repeal the Legislature's express reservation of power to dissolve the medallion system, and because neither the label "private property" nor the 2012 act's transfer process clearly conferred a right to an everlasting taxi cartel. Because they have not met their burden, Petitioners cannot "compel the government to regulate by *purchase*." *Andrus v. Allard*, 444 U.S. 51, 65 (1979).

BACKGROUND

I. Legal background

A. The Legislature creates a special district to regulate taxicabs in Hillsborough County.

Taxicab operation is "a privilege subject to regulation" under the State's police power. *Hamilton v. Collins*, 154 So. 201, 203 (Fla. 1934) (citation omitted); *see Pratt v. City of Hollywood*, 78 So. 2d 697, 699–700 (Fla. 1955); *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So. 2d 395, 397 (Fla. 3d DCA 1982) (citing *State ex rel. Hosack v. Yocum*, 186 So. 448 (Fla. 1939)). The State has delegated that regulatory authority to its counties, empowering them to "[l]icense and regulate taxis" operating within their borders. § 125.01(1)(n), Fla. Stat.

Before the State entrusted its counties to regulate taxicabs, taxicabs in Hillsborough County were regulated by three overlapping municipal ordinances. Fla. H.R. Subcomm. on Cmty. & Mil. Affs., CS/HB 891 (2012), Final Bill Analysis 2 (May 9, 2012). To streamline that patchwork regulatory scheme, *id.*, the Legislature enacted a law allocating regulatory control of taxicabs in the County to an independent special district. Ch. 76-383, § 2(1), Laws of Fla. Over the next few decades, the Legislature modified that statutory scheme several times.[2] In 1983, the Legislature reorganized the district under a new name: the Hillsborough County Public Transportation Commission (PTC). Ch. 83-423, § 1, Laws of Fla. And in 2001, the Legislature reorganized the PTC framework again, enacting the PTC's modern form. Ch. 2001-299, § 2(1), Laws of Fla.

The Legislature charged the PTC with a broad mandate to "[r]egulate and supervise the operation of public vehicles upon the public highways and in all other matters affecting the relationship between such operation and the traveling public." *Id.* § 5(1)(a). It also tasked

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[2] *See, e.g.*, Chs. 76-383, 78-525, 79-478, 82-304, 83-423, 87-496, 88-493, 95-490, 2000-441, 2001-299, 2007-297, 2008-290, 2010-272, 2012-247, Laws of Fla.

the PTC with "enforc[ing]" its regulatory framework; no provision was made for private enforcement. *Id.* § 10.

To operate a taxicab under the PTC framework, the Legislature required a person to acquire several documents. Among other things, he needed a "certificate" authorizing the taxicab business and a "permit" to drive a particular taxicab. *Id.* § 3(5), (20); *see also id.* § 7(2). Together, these items were called "medallions." R.30. The Legislature permitted the PTC to issue medallions only if the applicant proved that "public convenience and necessity require[d]" additional taxicab service. Ch. 2001-299, § 7(2)(a)–(b).

Once granted, medallions were "subject to the limitations imposed" by the statutory scheme. *Id.* § 7(2)(a). That included the condition that the PTC could "suspend or revoke" medallions, and could "[r]efuse to . . . renew" them. *Id.* § 5(2)(dd). It also included the express condition that the Legislature could "dissolve[]" the PTC medallion scheme entirely. *Id.* § 17.

B. The Legislature grants limited transfer rights to medallion holders, subject to the PTC's approval and existing regulatory constraints.

In 2012, the Legislature amended the medallion framework to empower medallion holders to "transfer" their medallions to others

"by pledge, sale, assignment, sublease, devise, or other means." Ch. 2012-247, § 1(3), Laws of Fla. Emphasizing that medallions were now privately transferable, the Legislature used the term "private property" to describe the medallions. *Id.* § 1(2). But the Legislature also limited the medallions' transferability. All transfers (other than those executed by devise or intestacy) were subject to the PTC's "approv[al]." *Id.* § 1(3). And all transferees (even heirs) had to follow the PTC's transfer "procedure[s]" and "qualify" as eligible medallion holders under the PTC's rules. *Id.* The act superseded "inconsistent" provisions in the 2001 act. *Id.* § 1(1).

The 2012 act also created the "Driver Ownership Program." *Id.* § 1(4). That program reserved a subset of medallions for actual taxicab drivers (rather than non-driving business operators). *See id.* It was even harder to transfer medallions obtained under that program: Those medallions were "nontransferable, except to other eligible taxicab drivers as authorized by commission rules," and only after the medallion had "been actively and continuously used by the eligible taxicab driver for at least 5 years." *Id.*

C. The Legislature dissolves the medallion system, deregulating the taxicab market and leaving future regulation to the County.

Exercising the power it expressly reserved for itself, Ch. 2001-299, § 17, the Legislature dissolved the PTC medallion scheme in 2017, Ch. 2017-198, §§ 1–3. That act lifted the ban on unlicensed taxicab operation in Hillsborough County, leaving the County's taxi market unregulated. *See id.* By operation of law, Hillsborough County then assumed power to regulate taxicabs. *See* § 125.01(1)(n), Fla. Stat. It later adopted a new taxicab ordinance that did not honor previously issued medallions. *See* Hillsborough County, Fla., Ordinance 17-22, §§ 7(A), 8(A) (Vehicle for Hire Ordinance).[3] Former medallion holders instead had to apply for new medallions, which were non-transferrable. *Id.* But they could continue driving taxicabs while their applications were pending. *See id.*

II. Facts and procedural history

A. Trial-court proceedings

Petitioners held medallions issued under the PTC framework. R.30. After the Legislature dissolved the PTC and the County declined

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[3] https://www.hillstax.org/other-services/vehicle-for-hire/ordinance-information/.

to honor their medallions, Petitioners sued both the State and the County in the Thirteenth Judicial Circuit. R.29–34. They asserted that the 2012 act had endowed them with a compensable property right in their medallions. R.30. They also claimed that Defendants' combined actions left their medallions "valueless" and thus worked an unlawful taking of property without compensation under Article X, Section 6 of the Florida Constitution. R.32.[4] Petitioners did not contend that they had been denied medallions under the County's new regime or that they were no longer operating cabs in the County. *See* R.29–34.

Before discovery, the County moved for summary judgment. R.19–23. It argued that the 2017 act had dissolved Petitioners' medallions before regulatory control shifted to the County. *See id.* Meanwhile, the State moved to dismiss for failure to state a claim. R.35–

[4] Florida's 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. This Court has held that Florida's Takings Clause is "coextensive[]" with the Fifth Amendment's Takings Clause. *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). The sole exception is that Florida's Takings Clause permits recovery of attorney's fees. *Joseph B. Doerr Tr. v. Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1215 n.5 (Fla. 2015).

45. It asserted that no taking occurred, but that if one did, the County was responsible because it had refused to honor former medallions. *See id.*

In one order, the circuit court granted the County's motion and denied the State's. R.150–52. The court ruled that the County could not have taken the medallions because the State "abolished" them when the Legislature dissolved the PTC. R.150–51. In the court's view, there were no medallions for the County to invalidate, because "they had, in essence, vanished" when the Legislature dissolved the statutory scheme. R.151. Although the court denied the State's motion to dismiss in its entirety, the court did not address the State's argument that there was no taking. *See* R.150–52.

B. Appellate-court proceedings

Petitioners and the State separately appealed the trial court's order to the Second District. R.460–62, 534–35. Petitioners' appeal challenged the grant of summary judgment for the County, claiming that it was at least partially to blame for taking Petitioners' medallions. R.460–62. The State's appeal similarly contested the grant of summary judgment for the County, but it also challenged the trial court's denial of its motion to dismiss on the ground that no taking

had occurred. R.534–35. Petitioners opposed the latter part of the State's appeal; they argued that the Second District lacked jurisdiction over the denial of the State's motion to dismiss because the denial was a non-final order. CCAP.24–30.[5]

After consolidating the appeals, the Second District ruled for the State. It first held that it had jurisdiction to review the denial of the State's motion to dismiss because that order was "directly related to an aspect . . . of the appealable final summary judgment in favor of the County." A.16 (quoting Fla. R. App. P. 9.110(k)). It then held that no taking occurred because Petitioners' medallions were not "private property" under the Takings Clause. A.8.

In reaching that conclusion, the Second District acknowledged the settled premise that "not all property interests are compensable under the Takings Clause." *See* A.28–29. Whether an interest amounts to compensable property, said the court, turns not on the interest's "label," but on whether the interest holder fairly expected that the interest was secure. *See* A.20, 27, 41. The court continued that statutory grants (like a taxi medallion) are generally legislative

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[5] The abbreviation "CCAP" refers to the Certified Copies of Appeal Papers.

"[p]rivileges," not compensable property, because the Legislature retains the power to amend or repeal the statute creating the grant. *See* A.18–19, 23–24, 27; *see also* A.31–36. For that reason, takings claims "typically" involve a "property interest" that "exists independent of the law that regulates it." *See* A.34. For a statutory grant to be compensable, said the court, the grant holder must prove that his right was secured by a legislative guarantee, like "a promise or a contract." *See* A.22, 23–25, 41.

The court held that Petitioners did not meet that high bar. Laws creating taxi medallions, the court said, have historically created revocable privileges, not compensable property. *See* A.19. The laws creating Petitioners' medallions were no different. The Legislature had retained the "power to change or abolish" the PTC's regulatory framework, A.24, which it had exercised "several times," A.23. "Any interest [Petitioners] had in their medallions" thus "amount[ed] to no more than a unilateral expectation" that the "regulatory framework" would remain unchanged. A.41 (cleaned up). The court also rejected the notion that the transfer system established in the 2012 act had "transform[ed] [the] medallion[s]" into compensable property. A.24. Transfers were "subject always to the regulation of the PTC." *Id.* And the

transfer system did not show that the Legislature had ceded "the power to change or abolish the regulatory framework that created [the] medallions." *Id.*

Judge Lucas dissented in part. For him, the use of the term "private property" in the 2012 act was dispositive: "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." A.42. Judge Lucas asserted that the majority's reading of the 2012 act would leave the "private property" language "superfluous." A.59.

Petitioners moved for certification and rehearing. CCAP.707–14. The Second District denied the motion. CCAP.718. Petitioners then sought this Court's review, but only in the State's appeal (2D20-3432), not in Petitioners' own appeal (2D20-3326). CCAP.721–24. The State later declined to reassert before this Court that summary judgment was inappropriate because the County was liable for any taking. *See* State's Jur. Br. at 1, No. 2023-95, *Bojorquez v. Florida* (Fla.). As a result, the only disputed order before this Court is the trial court's order denying the State's motion to dismiss.

STANDARD OF REVIEW

This Court reviews the order denying the State's motion to dismiss de novo. *Wallace v. Dean*, 3 So. 3d 1035, 1045 (Fla. 2009). Dismissal was proper if, taking Petitioners' allegations as true and granting them all reasonable inferences, they failed to show that the 2017 dissolution act worked a taking. *See id.* at 1042–43. The 2017 act receives a "presumption of constitutionality." *See Walton Cnty. v. Stop Beach Renourishment, Inc.*, 998 So. 2d 1102, 1109 (Fla. 2008) (citation omitted).

SUMMARY OF ARGUMENT

Petitioners contend that the 2012 act endowed them with a compensable contract right to operate a permanent taxicab cartel in Hillsborough County—a right the State supposedly took when it deregulated the taxicab market. The Second District correctly rejected that claim because "the legislature did not make a promise or a contract with the medallion holders by enacting the 2012 special legislation." A.25. Because statutes seldom make promises that bind future legislatures, Petitioners must show that the 2012 act unmistakably promised that the Legislature would not abolish their medallions

down the line. But the 2012 act does not come close to making such an unusual and costly legislative pledge.

To begin with, when the Legislature expressly reserves its right to alter a statutory scheme, it dispels the notion that it swore never to abolish the rights animated by that statutory scheme. *See Bowen v. Pub. Agencies Opposed To Soc. Sec. Entrapment*, 477 U.S. 41, 53–56 (1986). Here, the 2001 act establishing the modern medallion system expressly reserved the Legislature's right to "dissolve" that system, Ch. 2001-299, § 17, and nothing in the 2012 act unmistakably unwound that proviso. That reservation alone is enough to justify affirmance.

But even if that reservation were not enough, nothing in the 2012 act "clearly and unequivocally" promised never to abolish the medallions. *See Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (citation omitted). The "private property" label is insufficient because it is innately ambiguous and must be informed by context. And the only context Petitioners cite—the 2012 act's transfer procedure—does not clearly show that the 2012 Legislature shackled its successors' capacity to

regulate or deregulate the taxicab industry. Context proves just the opposite.

Finally, if the Legislature promised Petitioners anything, it promised only the permanent right to drive a taxicab; it did not grant a permanent right to an exclusive marketplace. Yet the 2017 dissolution act did not eliminate Petitioners' right to drive a taxi; it deregulated the field entirely, giving *everyone* the right to drive a taxi. The State thus did not take any right for which it must pay compensation.

ARGUMENT

To prove that the State committed a taking by dissolving the PTC medallion system, Petitioners must show both that their medallions were compensable property, and that the State took the medallions for public use. *See Checker Cab Ops., Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 917 (11th Cir. 2018); *Koontz*, 77 So. 3d at 1226. They have established neither.

I. Petitioners have not shown that their medallions were compensable property.

Petitioners contend that the 2012 act "expressly created" a compensable property right to their medallions. Init. Br. 13. Their medallions, however, were permissions to operate in a tightly regulated

system that the Legislature could inherently repeal. Petitioners therefore must show that the 2012 act unmistakably promised that the Legislature would not abolish their medallions. They have not made that showing.

A. Petitioners must show that the 2012 act unmistakably promised that the Legislature would never abolish the medallions.

1. Takings claims can sometimes yield hard questions about whether the "bundle of rights that [the plaintiff] acquire[d]" amounted to a compensable property right. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027 (1992). But when the asserted property is a State-created grant to operate in a highly regulated field (like the right to operate a taxicab business), the analysis is often simpler. If the government retains "the power to alter [the] government created right in response to changing conditions," it has not "relinquish[ed] control" of the right to the point that it becomes compensable property. *E.g.*, *Democratic Cent. Comm. of D.C. v. Wash. Metro. Area Transit Comm'n*, 38 F.3d 603, 606 (D.C. Cir. 1994); *see also Members of Peanut Quota Holders Ass'n, Inc. v. United States*, 421 F.3d 1323, 1334 (Fed. Cir. 2005); *Agripost, Inc. v. Metro. Miami-Dade Cnty.*, 845 So. 2d 918, 920 (Fla. 3d DCA 2003).

Examples of that principle abound. Say the State grants an exclusive and transferable right to operate a toll, but the State reserves the right to take that grant back. Even though the owner may use it, sell it, and exclude others from it, that right is not compensable property when the State exercises its reserved power to retract the grant. Property, at its core, is "what is securely and durably yours . . . as distinct from what you hold subject to so many conditions as to make your interest meager, transitory, or uncertain." *Hussey v. Milwaukee Cnty.*, 740 F.3d 1139, 1142 (7th Cir. 2014) (citation omitted). But the right to operate the toll was not "securely and durably" the grant holder's; it was subject to a State-imposed "condition" that made his interest "uncertain." *See id.*; *see also Peanut Quota Holders*, 421 F.3d at 1334.

That power to abolish State-created grants is the norm when the grant is animated by a statute. The Legislature, after all, has "unquestioned authority to repeal" regulatory schemes, *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.*, 372 So. 2d 419, 420 (Fla. 1979), in large part because "one legislature [may not] bind a future legislature," *Ware v. Seminole Cnty.*, 38 So. 2d 432, 433 (Fla. 1949). The holder of a statutory permission or entitlement therefore

generally takes the grant subject to the Legislature's "control" of it. *See, e.g.*, *State v. Burr*, 84 So. 61, 70–72 (Fla. 1920).[6] And "that which the legislature giveth, so may it taketh away." *Alterman Transp. Lines, Inc. v. State*, 405 So. 2d 456, 460 (Fla. 1st DCA 1981).

The Legislature's inherent right of repeal enables it to eliminate scores of statutory entitlements and permissions without "buying off the groups upon which the rights ha[ve] been conferred." *See Pittman*, 64 F.3d at 1104. Consider a food-stamp program. "[U]ndoubtedly food stamps in the hands of food stamp recipients are property" in a sense; the recipient may exclude others from taking his allotment, and "theft or fraud" of the stamps "would surely be punishable." *Peanut Quota Holders*, 421 F.3d at 1334. But the nature of a food stamp and the government's regulatory scheme implies that the right to receive or use food stamps may "be altered or extinguished at the government's election." *See id.* The "government's decision to terminate the food stamp program" thus does not require compensation. *See id.* And the same is true for countless other statutory grants, from

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[6] *See also S.C. State Educ. Assistance Auth. v. Cavazos*, 897 F.2d 1272, 1275–76 (4th Cir. 1990) (Congress generally reserves right to amend statutory grants); *Educ. Assistance Corp. v. Cavazos*, 902 F.2d 617, 628–29 & n.20 (8th Cir. 1990) (same).

tenure protections,[7] to crop quotas,[8] to child welfare.[9] The Legislature "is not, by virtue of having" adopted a regulatory scheme, "bound to continue it" on pain of a takings claim. *See Bowen v. Gilliard*, 483 U.S. 587, 604 (1987).[10]

2. In rare cases, though, a statute may venture beyond the realm of regulation and into the realm of "making promises." *See Wisc. & Mich. Ry. Co. v. Powers*, 191 U.S. 379, 387 (1903); *see also United States v. Winstar Corp.*, 518 U.S. 839, 920–21 (1996) (Scalia, J., concurring in the judgment).[11] For example, if the Legislature passes a statute "covenant[ing] and agree[ing]" to preserve an interest, the Legislature has effectively made a contract to that effect. *See U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 18 (1977); *Indiana*

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[7] *Pittman*, 64 F.3d at 1104.

[8] *Peanut Quota Holders*, 421 F.3d at 1334.

[9] *Bowen v. Gilliard*, 483 U.S. 587, 604 (1987).

[10] The State does not contend, as Petitioners suggest, that a statutory interest can never be compensable property. Init. Br. 33–34. But when the interest is a State-created grant issued pursuant to a pervasive statutory scheme, the State generally issues that grant subject to "legislative control," *see Burr*, 84 So. at 70–72, and need not pay compensation when it exercises that control.

[11] *See also Parella v. Ret. Bd. of R.I. Emps.' Ret. Sys.*, 173 F.3d 46, 60–61 (1st Cir. 1999).

ex rel. Anderson v. Brand, 303 U.S. 95, 105 (1938) (statute established contract right to tenure payments when statute was "couched in terms of contract"). The Legislature of course retains the right to repeal the statute and regulate the interest; again, "one legislature [may not] bind" another. *Ware*, 38 So. 2d at 433. But the Legislature cannot revoke the contract or promise that it made. And that contract right may arise to compensable property. *See, e.g.*, *Nat'l Educ. Ass'n-R.I. ex rel. Scigulinsky v. Ret. Bd. of R.I. Emps.' Ret. Sys. (NEA)*, 172 F.3d 22, 30 (1st Cir. 1999); *see also Scott v. Williams*, 107 So. 3d 379, 389 (Fla. 2013) (entertaining but rejecting claim that pension statute created a compensable contract right to specific pension conditions).

That is what Petitioners mean when they say the 2012 act effectively converted their medallions into compensable franchises. Init. Br. 14–24. A franchise is simply a "contract" with the State to operate a regulated business. *E.g.*, Init. Br. 45. Petitioners' argument is that the 2012 act effectively established a franchise contract in which the State promised them the right to operate a taxicab. *See id.* at 14–24.

Yet "[a] claim that a state statute creates a contract that binds future legislatures confronts a tropical-force headwind in the form of

the unmistakability doctrine.'" *Cranston Firefighters, IAFF Loc. 1363, AFL-CIO v. Raimondo*, 880 F.3d 44, 48 (1st Cir. 2018) (citation omitted). Under that doctrine, statutes are "presumed not to create" promises that bind the State's power to regulate. *See Pittman*, 64 F.3d at 1104; *Cranston Firefighters*, 880 F.3d at 48–49; *see also Winstar Corp.*, 518 U.S. at 920–21 (Scalia, J., concurring in the judgment). That "well-established presumption is grounded in the elementary proposition that the principal function of a legislature" is not to bind itself or its successors, but to make "[p]olicies" that it may "repeal" or "revis[e]" to meet changing circumstances. *Nat'l R.R. Passenger Corp.*, 470 U.S. at 466 (citation omitted). Courts thus "proceed cautiously" before concluding that a statute has purported to "disarm" the Legislature of its "essential" regulatory powers. *See id.* (citation omitted). "To presume otherwise would upset the balance of the separation of powers, and affect the Legislature's ability to respond to changing economic conditions." *Bartlett v. Cameron*, 316 P.3d 889, 894–95 (N.M. 2013).

To "overcome th[at] well-founded presumption," Petitioners must show that the 2012 act "clearly and unequivocally" promised not to abolish their medallions. *See Nat'l R.R. Passenger Corp.*, 470

U.S. at 466 (citation omitted); *see also Santa Rosa Cnty. v. Gulf Power Co.*, 635 So. 2d 96, 100 (Fla. 1st DCA 1994) (Ervin, J.) (adopting presumption).[12] It is not enough if the construction they propose is possible, or even "quite plausible." *Cranston Firefighters*, 880 F.3d at 49. The "textual commitment[]" to preserve the medallions must be "unmistakable." *Id.* "Every doubt should be resolved in favor of the government." *Louisville Bridge Co. v. United States*, 242 U.S. 409, 417 (1917) (citation omitted); *see also Colen v. Sunhaven Homes, Inc.*, 98 So. 2d 501, 505 (Fla. 1957) (similar).

That is an exceedingly weighty burden. In some courts, it has "[n]ever once" been met. *Cranston Firefighters*, 880 F.3d at 49. The State knows of no case in which this Court, the U.S. Supreme Court, or any other state high court has held that a statute created an inalienable right to a operate a taxicab. Many medallion holders have failed to prove similar claims. *See, e.g.*, *Atl. Metro Leasing, Inc. v. City of Atlanta*, 839 S.E.2d 278, 288–91 (Ga. Ct. App. 2020); *Joe*

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[12] The unmistakability doctrine squarely applies to laws granting a right to operate a business, like the statutes animating Petitioners' medallions. *See City of Owensboro v. Owensboro Waterworks Co.*, 191 U.S. 358, 369–71 (1903); *Providence Bank v. Billings*, 4 Pet. 514, 560–61 (1830).

Sanfelippo Cabs, Inc. v. City of Milwaukee, 839 F.3d 613, 615–16 (7th Cir. 2016).

Petitioners have not come close.

B. Petitioners have not shown that the 2012 act unmistakably promised that the Legislature would never abolish the medallions.

Petitioners have not established that the 2012 act "clearly and unequivocally" promised them a right to an eternal taxicab oligopoly. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466 (citation omitted). The Legislature expressly reserved the right to dissolve the regulatory system animating Petitioners' medallions in the 2001 act, confirming that it was making no such promises. That alone resolves this case.

Petitioners also cite nothing in the 2012 act evincing an "unmistakable textual commitment[]" never to abolish the medallions. *See Cranston Firefighters*, 880 F.3d at 49. To the contrary, both the history of taxicab regulation and the nature of the medallion framework make clear that the medallions remained part of a broader "scheme of public regulation" that was "inherently subject to revision and repeal." *Nat'l R.R. Passenger Corp.*, 470 U.S. at 466–67.

1. Petitioners fail to meet their burden because the Legislature expressly reserved the power to abolish the medallion system.

When the government "expressly reserve[s]" "the power to amend" the statutory scheme animating a government-created right, it dispels the expectation that the right was secure from regulatory change. *See Bowen v. Pub. Agencies Opposed To Soc. Sec. Entrapment*, 477 U.S. 41, 53–56 (1986).[13] Here, the Legislature expressly reserved the right to dissolve the medallion system. In the 2001 act, it provided that the PTC—the special independent district that housed the system and enforced the restrictions that gave the medallions force—could "be dissolved [under] section 189.4042, Florida Statutes." Ch. 2001-299, § 17. That statute, in turn, empowered "the Legislature" to "dissol[ve] [the] independent special district." § 189.4042(2), Fla. Stat. (2001).[14]

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[13] *See also Me. Ass'n of Retirees v. Bd. of Trs. of Me. Pub. Emps. Ret. Sys.*, 758 F.3d 23, 31–32 (1st Cir. 2014); *Wash. Educ. Ass'n v. Wash. Dep't of Ret. Sys.*, 332 P.3d 439, 444–46 (Wash. 2014); *S.C. State Educ. Assistance Auth.*, 897 F.2d at 1277; *Fla. Power & Light Co. v. City of Miami*, 98 F.2d 180, 183 (5th Cir. 1938); *Mt. Vernon, Alexandria & Wash. Ry. Co. v. United States*, 75 Ct. Cl. 704, 709–10 (1932).

[14] The Legislature later modified Section 189.4042 to provide that electors in a special independent district must also agree to the

That upfront reservation makes this case much like *Public Agencies Opposed To Social Security Entrapment*. There, California had entered into an "agreement" with the federal government under the Social Security Act. *Pub. Agencies*, 477 U.S. at 48. When California entered into the agreement, the Act allowed California to "terminate" the agreement, and the agreement contained a provision to that effect. *Id.* at 48–49. Later, Congress amended the Act to eliminate California's right to terminate the agreement. *Id.* at 48. A district court then held that the contractual right to withdraw was California's "private property," and the amendment had taken that property without compensation. *Id.* at 51.

The U.S. Supreme Court reversed because Congress had "expressly reserv[ed]" its "right to alter, amend, or repeal any provision of the Act." *Id.* at 51–52 (citation omitted). "Th[o]se few simple words," held the Court, "ha[d] given special notice of [Congress's] intention to

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Legislature's dissolution. § 189.4042(3)(b), Fla. Stat. (July 1, 2012). But that modification does not change the analysis. The change occurred after the 2012 act that supposedly endowed Petitioners with a compensable property right. *Compare* Ch. 2012-247 (effective April 14, 2012), *with* § 189.4042, Fla. Stat. (2012) (effective July 1, 2012). And that amendment did not change the fact that the medallion scheme was expressly subject to dissolution; it simply added another step to the process.

retain[] full and complete power" to alter the statutory scheme under which the agreements were executed. *Id.* at 53 (citation omitted). Given that express "reservation," California's agreement "simply [could not] be viewed as conferring any sort of vested right . . . within the meaning of the Fifth Amendment." *Id.* at 55–56 (cleaned up).

A similar analysis applies in the Contract Clause context. *See Duncan v. Muzyn*, 833 F.3d 567, 583 (6th Cir. 2016) (when the asserted statutory interest is effectively a contract right, the takings analysis "borrows principles from the Contract Clause context"). In *National Railroad*, the Supreme Court held that the statute creating Amtrak did not engender a "private contractual or vested right[]" when Congress "expressly reserved" its right to "repeal, alter, or amend" the statute "at any time." 470 U.S. at 466–67 (citation omitted). So too in the *Sinking Fund Cases*, in which the Court rejected a claim that a statute had created "vested rights" when Congress had "given special notice of its intention to retain[] full and complete power to make . . . alterations and amendments" to the statute. 99 U.S. 700, 720, 733 (1878). And the same was true in *Boston Beer Co. v. Massachusetts*, in which a charter permitting liquor distribution created no immutable right when the charter provided that the

legislature could "make further provisions" or "repeal any act or part" of the charter "as shall be deemed expedient." 97 U.S. 25, 31 (1877).

Those cases govern here. The Legislature expressly reserved its right to dissolve the medallion system. "Th[o]se few simple words" gave "special notice of [the State's] intention to retain[] full and complete power" to abolish medallions operating under that system. *Pub. Agencies*, 477 U.S. at 53 (citation omitted). That is enough to resolve this case.

Petitioners do not argue that anything in the 2012 act repealed that express reservation of power. Nor could they. Though the act "supersedes any provisions of chapter 2001-299 . . . to the extent such provisions are inconsistent with" it, Ch. 2012-247, § 1(1), nothing in the 2012 act contradicts the unremarkable fact that the medallion framework could be repealed. "Had the Legislature intended" to repeal a provision so clearly reserving its right to abolish the medallion system, "it could easily have included a provision to that effect." *State v. Sarasota Cnty.*, 74 So. 2d 542, 543 (Fla. 1954). That it did not is strong evidence that the 2012 act left the express-reservation provision undisturbed. *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 327 (2012). ("[I]f

statutes are to be repealed, they should be repealed with some specificity."); *see also City of Tallahassee v. Fla. Police Benevolent Ass'n*, Inc., No. SC21-0651, 2023 WL 8264181, at *7 (Fla. Nov. 30, 2023) (similar). And again, the question is whether the Legislature *unmistakably* ceded its right to abolish the medallion system. The superseding clause does not provide that clear statement.

2. Even if the Legislature had not expressly reserved the power to abolish the medallion system, Petitioners could not meet their burden because nothing in the 2012 act unmistakably promised never to abolish the medallions.

Though the Legislature's express reservation is dispositive, the State "need not [have] express[ly]" reserved its power to repeal the medallion system to defeat Petitioners' claim. *See Wash. Metro. Area Transit Comm'n*, 38 F.3d at 607 (collecting cases). Under the unmistakability doctrine, the 2012 act is "presumed not to [have] create[d]" a binding promise obligating the State to maintain the medallions forever. *See, e.g.*, *Pittman*, 64 F.3d at 1104; *Cranston Firefighters*, 880 F.3d at 48–49; *supra* 16–23.

To overcome that presumption, Petitioners bet their case on three aspects of the 2012 act. First, they zero in on the "private property" label that the Legislature used to describe their medallions.

Second, they note that the 2012 act made their medallions transferable and devisable in some circumstances. Third, they observe that the act involved public transportation, and historically states have granted franchises to operate modes of public transportation. None of that shows the 2012 act unmistakably committed the Legislature to never abolish the medallions, subject to the price of a takings claim. *See Cranston Firefighters*, 880 F.3d at 49.

i. Petitioners first claim that when the Legislature called their medallions "private property," it made those medallions "compensable property." *See* Init. Br. 26–27. That is wrong. The term "property" is a capacious "label" that can mean different things in different contexts. *See Reed v. Vill. of Shorewood*, 704 F.2d 943, 948 (7th Cir. 1983), *overruled on other grounds by Brunson v. Murray*, 843 F.3d 698 (7th Cir. 2016). That label is not inherently "synonymous" with compensable property, especially in the context of statutory grants. *See NEA*, 172 F.3d at 26, 29–30.

For starters, Florida law has long recognized that a statutory grant may have "the quality of property," *House v. Cotton*, 52 So. 2d 340, 341 (Fla. 1951), but still fall short of "property in a constitutional sense," *State ex rel. First Presbyterian Church of Miami v. Fuller (Fuller*

II), 187 So. 148, 150 (Fla. 1939). Recall our food-stamp hypothetical. Food stamps are no doubt "private property" in that a recipient may use his share and exclude others from it. *See Peanut Quota Holders*, 421 F.3d at 1334. But food stamps remain grants that may "be altered or extinguished at the government's election," so the "government's decision to terminate the food stamp program" does not require compensation. *Id.* The stamps, in other words, are in some sense "private property," but they are not *compensable* property. The same is true of many other statutory grants. *See id.* (crop quotas); *Pittman*, 64 F.3d at 1104 (tenure protections); *Gilliard*, 483 U.S. at 604 (welfare payments).

Nor is that the only ambiguity in the phrase "private property." An interest may be "property" for one constitutional purpose but not another. For instance, both the Due Process Clause and the Takings Clause protect "property," but that term "is defined much more narrowly" in the Takings Clause "than in the due process clauses." *Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, 1075 (11th Cir. 1996); *see also Hignell-Stark v. City of New Orleans*, 46 F.4th 317, 323–24 (5th Cir. 2022). The Due Process Clause, by example, protects a teacher's "property" interest in his job, *see Bd. of Regents of State Colls. v. Roth*,

408 U.S. 564, 576–77 (1972), but the Takings Clause does not entitle him to compensation for that "property" if the State shutters his school, *see Pittman*, 64 F.3d at 1104–05. The same principle applies to grants to operate a business. A liquor licensee receives due-process protections, *see Kline v. State Beverage Dep't*, 77 So. 2d 872, 874 (Fla. 1955), but surely is due no compensation if the State decides to "prohibit" the sale of liquor, *cf. Leafer v. State*, 104 So. 2d 350, 351 (Fla. 1958). So even if the phrase "private property" conveys some type of constitutional protection, it does not identify the *degree* of constitutional protection afforded.

Those examples illustrate a broader point: The "[l]abel" private property is "convenient," but it "mislead[s] by [its] simplicity." *See Carter v. State*, 485 So. 2d 1292, 1295 (Fla. 4th DCA 1986). This Court "must look behind" the "label[]" to "determin[e] the existence of a [compensable] property interest." *See 145 Fisk, LLC v. Nicklas*, 986 F.3d 759, 770 (7th Cir. 2021) (quoting *Reed*, 704 F.2d at 948). And because the Court must peer behind the "private property" label to discern its meaning, it is not the "clear[] and unequivocal[]" statement needed to establish a legislative promise to preserve a perpetual

taxicab syndicate. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466 (citation omitted).

For similar reasons, courts have held that capacious labels like "vested interest"[15] and "guaranty"[16] do not suffice to establish a legislative promise never to alter a statutory entitlement. In fact, this Court has rejected a takings claim grounded on statutory terms far more concrete that the label "private property." *See Scott v. Williams*, 107 So. 3d 379 (Fla. 2013). In *Williams*, state employees alleged that the State committed a taking when it amended the State's employee-pension statute to eliminate cost-of-living adjustments and to require mandatory employee contributions for future benefits accrued under the plan. 107 So. 3d at 383–84. They grounded their claim in a provision providing that "the rights of members of the retirement system" are "contractual" and "shall be legally enforceable as valid contract rights and shall not be abridged in any way." *Id.* at 383 (citing § 121.011(3)(d), Fla. Stat. (2012)). The employees claimed that this language effectively established a legislative promise not to subject their

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[15] *Puckett v. Lexington-Fayette Urb. Cnty. Gov't*, 833 F.3d 590, 601 (6th Cir. 2016).

[16] *NEA*, 172 F.3d at 28.

benefits to new statutory conditions "over the life of their employment." *Id.* at 386.

This Court rejected that claim. *Id.* at 387–89. It held that although the provision may have preserved benefits already accrued, it did not establish a legislative promise to provide the same level of benefits moving forward. *See id.* at 388 (citing *Fla. Sheriffs Ass'n v. Dep't of Admin.*, 408 So. 2d 1033, 1037 (Fla. 1981)). "To hold otherwise would mean that no future legislature could in any way alter future benefits . . . except in a manner favorable to the employee," no matter "the fiscal condition of th[e] state." *Id.* That sort of "permanent responsibility" would "lead to fiscal irresponsibility," and the statutory language did not provide the clear statement needed to prove that the Legislature had made such an unusual commitment. *See id.* at 387–89.

This case is the same. The ambiguous "private property" label is "hardly the language" of a "clear[] and unequivocal[]" commitment that the Legislature would forever maintain the medallion system, no matter the public's interest. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466–67 (citation omitted). Had the Legislature intended to make

such an unusual and permanent promise, it would have made that intention clear.

ii. Petitioners accept that they must point to more than the "private property" label to establish a compensable property right. *See* Init. Br. 27 ("Of course, [private property] . . . must be interpreted in [its] context." (quotations omitted)). They contend that "private property" must mean "compensable property" because the 2012 act also created a limited right to transfer or devise medallions. Init. Br. 27–32. They are mistaken.

To start, that Petitioners could transfer or devise their medallions does not mean the Legislature necessarily agreed to preserve them at all costs. Like Petitioners' medallions, liquor licenses have long been "transfer[red]" for profit in Florida. *House*, 52 So. 2d at 341.[17] But despite having a right to transfer the license, "a person enters the business of selling liquor . . . well-knowing that the legislature has the power not only to regulate but to prohibit" the sale of liquor entirely. *Leafer*, 104 So. 2d at 351 (citation omitted). So long as due process is paid, *see Kline*, 77 So. 2d at 874, the Legislature

[17] *See* § 561.32, Fla. Stat.

injures no "vested rights" when it "regulate[s] or cancel[s] the licenses previously issued," *State ex rel. First Presbyterian Church of Miami v. Fuller (Fuller I)*, 182 So. 888, 890 (Fla. 1938). Given those limitations, a liquor license generally is not "property in a constitutional sense," *see Leafer*, 104 So. 2d at 351 (citation omitted), as least so far as the Takings Clause is concerned.

Still, a liquor license's transferability does make it "property in a *commercial* sense." *Yarbrough v. Villeneuve*, 160 So. 2d 747, 748 (Fla. 1st DCA 1964) (emphasis added), *disapproved on other grounds by Walling Enters., Inc. v. Mathias*, 636 So. 2d 1294 (Fla. 1994). The license can be sold for "actual pecuniary value far in excess of the license fees exacted by the state." *House*, 52 So. 2d at 341. Courts thus treat liquor licenses as having "the quality of property" for commercial purposes, even subjecting them to creditors' liens. *See Yarbrough*, 160 So. 2d at 748 (citation omitted); *see also* § 561.65, Fla. Stat.

That background not only proves that Petitioners' transfer rights are far from the "unmistakable textual commitment[]" they need, *see Cranston Firefighters*, 880 F.3d at 49; it provides the best construction of the "private property" label in the 2012 act. The

Legislature presumably "[wa]s aware of the state of the common law when it enact[ed]" that statute. *Vintage Motors of Sarasota, Inc. v. MAC Enters. of N.C., LLC*, 336 So. 3d 374, 378 (Fla. 2d DCA 2022) (citation omitted). And the common law established that the Legislature could give medallions "the quality of property" by making them transferrable, *see House*, 52 So. 2d at 341, without forgoing the power "to regulate" or "prohibit" medallions entirely, *see Leafer*, 104 So. 2d at 351. The "private property" label, in a word, emphasized that Petitioners' medallions were "property in a *commercial* sense," not that they were "property in a constitutional sense." *See Yarbrough*, 160 So. 2d at 748 (emphasis added).

That is indeed how courts have construed the effect that transfer rights have on taxicab and similar medallions. Decades ago, the Second District held that taxicab medallions were still "mere privilege[s]" even when the medallion holder had a right to transfer. *See Yellow Cab Co. v. Ingalls*, 104 So. 2d 844, 847 (Fla. 2d DCA 1958). A Georgia court held the same just a few years ago. *See Atl. Metro Leasing*, 839 S.E.2d at 288–91. And the First District reached a similar result for trucking medallions that had "actual pecuniary value,"

presumably on the transfer market. *See Alterman*, 405 So. 2d at 459–60.

A commercial-focused construction of "private property" is also supported by the "many conditions" the Legislature placed on transfers and devises. *See Reed*, 704 F.2d at 948. To quote an article on which Petitioners place great weight: "Restrictions on transfer, such as required consent of an administrative agency with discretion to veto the transfer, are indicative of a license rather than a franchise" that limits the State's regulatory power.[18] Here, all transfers (other than those executed by devise or intestacy) had to be "approved" by the PTC. Ch. 2012-247, § 1(3). And all transferees (even heirs) had to follow the PTC's transfer "procedure[s]" and "qualify" as eligible medallion holders under the PTC's rules. *Id.* That medallions were "not assignable without" the PTC's "express permission" underscores that the State granted no immutable "right[s]," but merely abolishable "privilege[s]." *See Devlin v. Phoenix, Inc.*, 471 So. 2d 93, 95 (Fla. 5th DCA 1985).

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[18] John Greil, *The Unfranchised Competitor Doctrine*, 66 Vill. L. Rev. 357, 390 (2021).

Those transfer limits make this an even easier case than the one the Fifth Circuit faced in *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 273–74 (5th Cir. 2012). There, taxicab medallion holders claimed that the city committed a taking when it amended its taxicab ordinance to give officials discretion to deny medallion transfers (previously, transfers were always granted if certain preconditions were met). Despite that mandatory transfer right, the Fifth Circuit still held that the medallions were not "constitutionally protected" under the Takings Clause because the transfer preconditions were "subject to further change." *Id.* By contrast, transfers here were subject to the PTC's unconstrained "approv[al]," Ch. 2012-247, § 1(3), and the 2012 act did not limit the PTC's absolute discretion to change its qualification requirements, *id.* The 2012 act's restrictions thus reserved far more power to the State than the restrictions that the Fifth Circuit held were sufficient to avoid a takings claim.[19]

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[19] Petitioners miss the point when they claim that the State's argument about transfer restrictions would rob items like "pharmaceutical products" and "intellectual property" of the Takings Clause's protections. Init. Br. 36. The State has not reserved the power to approve transfers of those items, as it has for Petitioners' medallions. Nor does the State assert that whenever it restricts an item's transferability, the item is not compensable. The State merely contends

None of the cases cited by Petitioners suggest that a right to transfer inherently establishes a statutory interest immune from regulatory change. Most of them simply affirm that transferrable licenses are "property in a commercial sense," in that they may be subject to a lien. *See Yarbrough*, 160 So. 2d at 748.[20] That says nothing of whether transferable licenses are necessarily rights that the Legislature has sworn not to abolish.

Just two cases Petitioners cite held that a transferable license was compensable property. *See State by Mattson v. Saugen*, 169 N.W.2d 37, 41 (Minn. 1969); *Boonstra v. City of Chicago*, 574 N.E.2d 689, 691, 694–95 (Ill. App. Ct. 1991). Starting with *Saugen*, courts have questioned the case's reasoning. *See AVM-HOU, Ltd. v. Cap. Metro. Transp. Auth.*, 262 S.W.3d 574, 584 (Tex. App. 2008). But even there, the government did not abolish the liquor-licensing system; it

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that when the property asserted is a permission to operate as a common carrier in a highly regulated system, restrictions on transferability indicate that the State did not clearly divest itself of its power to abolish that permission. *See Dennis Melancon*, 703 F.3d at 273–74.

[20] *See Deggender v. Seattle Brewing & Malting Co.*, 83 P. 898, 899 (Wash. 1906); *Jubitz v. Gress*, 187 P. 1111, 1113 (Or. 1920); *Rushmore State Bank v. Kurylas, Inc.*, 424 N.W.2d 649, 654 (S.D. 1988); *McCray v. Chrucky*, 173 A.2d 39, 39–43 (N.J. Essex Cnty. Ct. 1961).

took real property attached to a still-operative liquor license. *See Saugen*, 169 N.W.2d at 39. *Saugen* did not suggest that the government would have committed a taking had it abolished the licensing system and deregulated the field, as the Legislature did for the County's taxi market.

As for *Boonstra*, the Second District correctly recognized that the case "relied exclusively" on precedents involving the Due Process Clause, missing entirely the distinction between property rights warranting due process and property rights warranting compensation. A.39 (emphasis omitted). *Boonstra* also gave no credit to the presumption that statutes rarely make binding promises about the Legislature's future conduct. *Supra* 16–23. And *Boonstra* did not consider whether the medallions at issue were revocable, and the plaintiff there showed that the city had never denied a transfer, *Boonstra*, 574 N.E.2d at 694, while Petitioners have made no such claim. One federal district court has already distinguished *Boonstra* for similar reasons and adopted instead the Fifth Circuit's analysis in *Dennis Melancon*. *See City-Cnty. Taxi, Inc. v. Metro. Taxicab Comm'n*, No. 4:12-cv-408, 2013 WL 627426, at *3 (E.D. Mo. Feb. 20, 2013). This Court should do the same.

iii. Petitioners also assert that the 2012 act created a franchise contract because it involved a "mode[] of public transportation," and "[h]istorically, legislative grants to private persons to operate" public transportation have established compensable franchises. *See* Init. Br. 14–24. At the outset, even if Petitioners had a franchise, it is far from clear that the franchise brought with it a legislative promise to never abolish the medallion system. The government generally "reserve[s]" the right to use the "police power . . . when the circumstances should require it." *See Fla. Power & Light Co. v. City of Miami*, 98 F.2d 180, 183 (5th Cir. 1938). For that reason, franchises often do not contain a promise that the government will not outright abolish or deregulate the activity. *See, e.g.*, *Stone v. Mississippi*, 101 U.S. 814, 820–21 (1879) (government did not promise never to ban lotteries when it issued grant to run a lottery); *Bos. Beer Co.*, 97 U.S. at 32–34 (similar for liquor distribution). It is untenable that the State, having granted a franchise to operate a nuclear power plant, must "*purchase*" the franchise back if it later bans nuclear power. *See Andrus*, 444 U.S. at 65.

But regardless, history refutes that Petitioners had any sort of franchise. Unlike the common-carrier franchises Petitioners mention,

taxicab medallions generally have been considered revocable licenses, not compensable franchises. And Petitioners' medallions are markedly different from the common-carrier franchises of the past.

To begin, there is no "inherent right" to operate a common-carrier business (like a taxicab). *State v. Quigg*, 114 So. 859, 862 (Fla. 1927) (citation omitted; collecting cases). Rather, common carriers usually must obtain "permission or license" from the government to operate. *Id.* at 861–62. Because they pose "safety" risks to both passengers and the travelling public, *see Riley v. Lawson*, 143 So. 619, 622 (Fla. 1932), their operation is tightly regulated under the State's police power, *see Yocum*, 186 So. at 450.

Those principles have long applied to taxicabs. Early taxicab laws did not create "contracts," but "mere licenses revocable by the power which granted them." *See The Taxicab Cases*, 82 Misc. 94, 104–05 (N.Y. Sup. Ct. 1913) (collecting cases). Taxicab medallions were not "franchises or vested property interests." *See Cave v. Rudolph*, 287 F. 989, 992 (D.C. Cir. 1923); McQuillin Mun. Corp. § 26:183 (3d ed.) (collecting cases). They instead had "superinduced upon them the right of public regulation." *The Taxicab Cases*, 82 Misc. at 106. The government thus did not violate any constitutional

rights when it "repeal[ed]" the "ordinance pursuant to which [the medallions] were issued." *Id.* The medallion simply "f[ell] with the ordinance." *Id.*; *see also Bush v. City of Jasper*, 24 So. 2d 543, 545 (Ala. 1945).

Florida precedent tracked those early cases. This Court held nearly a century ago that the "[r]ights of common carriage" by "taxicabs, are legislative grants or concessions, much lower in legal quality and dignity than the rights of ordinary use." *Quigg*, 114 So. at 861–62 (citation omitted). Laws granting taxicab medallions were thus understood not to create vested rights, but to impart "privilege[s] that may be restricted or withdrawn at the discretion of the granting power." *Pratt v. City of Hollywood*, 78 So. 2d 697, 699–700 (Fla. 1955) (citation omitted); *see also Hartman Transp. Inc. v. Bevis*, 293 So. 2d 37 (Fla. 1974); *Ingalls*, 104 So. 2d at 847. A taxicab medallion could "be granted to one and withheld from others . . . without transgressing any state or federal constitutional guaranty." *See Pratt*, 78 So. 2d at 699 (citation omitted); *see also Jarrell v. Orlando Transit Co.*, 167 So. 664, 666 (Fla. 1936); *N. Beach Yellow Cab Co. v. Vill. of Bal Harbour*, 135 So. 2d 4, 5 (Fla. 3d DCA 1961).

Petitioners point to some "legislative grants" to operate "modes of public transportation" that have been secured as franchises. Init. Br. 14–24. But those franchises were typically distinguished from "certificate[s] of public convenience and necessity" like a taxi medallion. *See Miami Beach Airline Serv. v. Crandon*, 32 So. 2d 153, 154 (Fla. 1947); *Jarrell*, 167 So. at 665–66.[21] And following that tradition, the 2001 act too distinguished franchises, contracts, and medallions. The act empowered the PTC to "[e]nter into contracts." Ch. 2001-299, § 5(2)(j), and to issue the "certificate[s]" of "public convenience and necessity" that comprised Petitioners' medallions, *see id.* § 5(1)(i). But the act excluded from the definition of "[t]axicab" all "sight-seeing cars or buses, streetcars, or motor buses operated *pursuant to franchise*." *Id.* § 3(30) (emphasis added). So the Legislature knew how to use the terms that Petitioners fancy their medallions to be. That the Legislature did not use those terms to describe Petitioners' medallions in either the 2001 act or 2012 act indicates that their

[21] *See also City of Miami v. S. Miami Coach Lines*, 59 So. 2d 52, 55 (Fla. 1952) (distinguishing bus "franchise" from "certificate" to operate bus service).

medallions were neither franchises nor contracts. *Cf. State v. Mark Marks, P.A.*, 698 So. 2d 533, 540–41 (Fla. 1997).

That is not the only difference between Petitioners' medallions and historical common-carrier franchises. When a common-carrier franchise was granted, it often was time-limited, likely to avoid creating a perpetual monopoly. *E.g.*, *S. Miami Coach Lines*, 59 So. 2d at 55 (30 years); *Jarrell*, 167 So. at 666 (10 years). Petitioners' medallions, by contrast, were assigned no time limit. On Petitioners' theory, then, the 2012 act granted them and their assignees the right to operate an everlasting taxi cartel, no matter the injuries that oligopoly might later inflict on the State or its citizens. States seldom write such blank checks, *see Williams*, 107 So. 3d at 387–89, and nothing clearly shows that the State did so here.

Finally, in the rare cases in which taxicab franchises were granted, they usually granted the franchisee exclusive access to a fixed route, like an exclusive right to pick up passengers at an airport and drive them to the city. *See Miami Beach Airline Serv.*, 32 So. 2d at 154; *City of Fort Lauderdale v. Taxi, Inc.*, 247 So. 2d 467, 468 (Fla. 4th DCA 1971); *cf. Jarrell*, 167 So. at 665–66 (distinguishing a bus franchisee, which operated a "fixed route," from a taxicab operator,

which "r[a]n promiscuously"); *Atl. Metro Leasing*, 839 S.E.2d at 286–87 (similar). Petitioners' medallions, on the other hand, were not confined to a fixed route, but merely to the confines of Hillsborough County, *e.g.*, Ch. 2001-299, § 7(1), which underlines that they were not franchises.

Far closer to the medallions in our case, the First District has held that trucking "certificate[s] of public convenience" remain privileges that the government may abolish by dissolving the governing regulatory scheme. *See Alterman*, 405 So. 2d at 460. In *Alterman*, motor carriers with trucking medallions claimed that the State committed a taking when it repealed the statute creating their medallions. *Id.* at 459. The First District rejected the claim. Though the court noted that trucking medallions had "the quality of property with an actual pecuniary value" in "excess of their stated cost," the laws creating them established neither "a contract" nor "property in a constitutional sense." *Id.* at 460. The medallions instead remained "at all times revocable at the will of the people of Florida, as expressed by and through their elected representatives." *Id.* The same was generally true of the taxicab medallion. *Supra* 41–43.

Modern cases construing taxicab medallions have mirrored that history. The consensus is that taxi medallions do not establish "binding contracts between the [State] and the licensee" and offer no "promises" about the medallions' viability. McQuillin Mun. Corp. § 29:3 (3d ed.) (collecting cases). Two cases are worth mentioning.

In *Atlanta Metro Leasing*, the court rejected a claim that legislation created a taxicab franchise (rather than a revocable license). *See* 839 S.E.2d at 288–91. Because "statutes and ordinances generally do not create contracts," the medallion holders had to show that the relevant laws "manifest[ed] a clear and unequivocal expression" that the government meant to "bind itself." *Id.* at 288–89. They could not carry that burden, in large part because nothing in the relevant laws overcame the presumption that "the rights conferred by" the medallions could "be modified, amended, or repealed unilaterally" and "at any time." *Id.* at 290. The lack of clear textual evidence "defeat[ed] the notion that by issuing [medallions] the City entered into binding agreements promising perpetual exclusivity." *Id.*

The Seventh Circuit conducted a similar analysis in *Joe Sanfelippo Cabs*, 839 F.3d at 615–16. There medallion holders claimed a taking when a city increased the number of medallions it could issue.

Id. at 615. To Judge Posner, the claim "border[ed] on the absurd." *Id.* Nothing in the relevant law purported "to freeze" the government's ability to "repeal[]" the law establishing the medallion limit "at any time." *Id.* at 616. The city had thus given "no guarantee that the [prior limit] would remain in force indefinitely." *Id.* The same analysis applies here: Nothing in the 2012 act unmistakably promised that the medallion system would forever remain intact.

In sum, Petitioners are right that operators of some "modes of public transportation" historically have been granted franchises. Init. Br. 14. But taxicab operators mostly were not among them, and Petitioners' medallions were quite unlike traditional common-carrier franchises. History therefore does not provide the "clear[] and unequivocal[]" evidence they need to establish a right to compensation. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466 (citation omitted).

* * *

All said, Petitioners bear the burden to prove that the 2012 act was not merely "framing a scheme" of "public improvement," but was instead "making promises" that the Legislature would never abolish their medallions. *See Wisc. & Mich. Ry. Co.*, 191 U.S. at 387. But statutes are "presumed not to" make such promises, *Pittman*, 64 F.3d

at 1104, and none of the language Petitioners cite "clearly and unequivocally" defeats that presumption. *Nat'l R.R. Passenger Corp.*, 470 U.S. at 466 (citation omitted). That "ambiguity dooms" Petitioners' takings claim. *Me. Ass'n of Retirees*, 758 F.3d at 31.

3. Context confirms that the 2012 act did not unmistakably promise never to abolish the medallions.

Although Petitioners pluck choice language from the 2012 act and analyze it in a vacuum, they concede that words "must be interpreted in their context." Init. Br. 27 (quotations omitted). But a great deal of context affirms that the 2012 act did not create a franchise right to Petitioners' medallions, let alone a right free of the State's power to later abolish medallions entirely. The medallions remained subject to a pervasive regulatory framework even after the 2012 act, which is inconsistent with an immortal right to a medallion. And more practically, Petitioners' theory raises so many intractable questions that it cannot be correct.

i. When the State retains "pervasive . . . control" over a State-created grant, it rarely creates a franchise that it must pay to abolish. *See Dennis Melancon*, 703 F.3d at 272–74. Even after the 2012 act, the State retained pervasive control over Petitioners' medallions.

For one thing, medallions were issued on the condition that the PTC could both "suspend or revoke" them, and "refuse" to "renew" them. Ch. 2001-299 § 5(2)(dd). But "if a right is revocable, then it cannot be a franchise." Greil, *supra*, at 389 (emphasis omitted). And here, the State explicitly endowed the PTC with "broad discretion" to "extinguish [Petitioners'] interest[s]" case-by-case. *See Dennis Melancon*, 703 F.3d at 274. That inherent limitation thwarts any claim to a franchise. *See, e.g.*, *United States v. Fuller*, 409 U.S. 488, 493 (1973) (no compensable property interest in revocable grazing permit); *Conti v. United States*, 291 F.3d 1334, 1341–42 (Fed. Cir. 2002) (similar for revocable fishing permit); *Hignell-Stark*, 46 F.4th at 324 (similar for revocable short-term-rental license).

Those limitations again make this case like *Dennis Melancon*. There, medallions were issued on the condition that government could "suspend or revoke" them. *Dennis Melancon*, 703 F.3d at 272. That limitation solidified the Fifth Circuit's conclusion that the medallions were not compensable. The medallions, the court held, had "emerged from a regulatory framework that itself allow[ed] the City to limit or revoke that interest." *Id.* at 274. "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" their use of a medallion. *Id.* So too for medallions issued under the PTC scheme.

It is immaterial that in *Dennis Melancon* the government called the medallions "privileges," not "private property." Init. Br. 40. As explained above, what the government labels a right says little about its constitutional standing. *Supra* 29–33. And though the challenged law in *Dennis Melancon* called the medallions "privileges," 703 F.3d at 266, the plaintiffs asserted that the *prior* law—the law that the government had amended—had created a compensable property right to their medallions, *id.* at 266–67. The Fifth Circuit's analysis thus focused on the medallion holders' rights under the prior law, not the challenged law. *Id.* at 272–74. And the prior law did not call the medallions "privileges."

Petitioners also note that the city in *Dennis Melancon* could "adjust the number of certificates" available, "whereas here the 2012 act capped the number of medallions based on the county's population." Init. Br. 40. But that alone did not drive the Fifth Circuit's decision. *See generally Dennis Melancon*, 703 F.3d at 272–74. And in any event, nothing in the 2001 act promised not to increase the number

of medallions available in the market. The 2001 act even empowered *the PTC* to increase the cap. It charged the PTC to "establish a cap on the number of taxicab permits which may be issued based on the population of the county." Ch. 2001-299 § 5(v). That provision compelled the PTC to tie the medallion cap to the County's population, but it did not purport to define how high the cap could be set. Nor did the 2012 act alter that discretion. Init. Br. 39. The 2012 act did incorporate "the existing and authorized population cap and limits for taxicab permits," but only for purposes of allotting permits to the Driver Ownership Program. *See* Ch. 2012-247 § 1(4). The very next section recognized that the PTC could still "increase" the "population cap" in the future. *Id.* § 1(5)(b).

Along with the condition that medallions could be revoked, the medallions operated within a ubiquitous regulatory framework. Medallions holders had to follow extensive regulatory requirements, like pre-set taxicab rates, Ch. 2001-299 § 5(1)(j), designated operation zones, *id.*, and comprehensive safety and insurance standards, *id.* § 5(1)(h), (m), (gg); *see also id.* § 9(1). The statutes defining those restrictions had also "been altered and amended by special legislation and PTC rules several times since the legislature created it in 1976."

A.19 (citing Ch. 83-423; Ch. 2001-299; Ch. 2012-247); *supra* 4 (listing no fewer than 14 amendments to the framework). That unpredictable and closely regulated system confirms that the State did not give up control over the medallions that operated within it. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 469.

The PTC also retained express statutory authority to enforce the restrictions that gave Petitioners' medallions their force. Ch. 2001-299 § 10. Nothing in the act provided for private enforcement. *See id.* Nor do Petitioners cite any authorities to the contrary. Init. Br. 37–38. The cases they cite merely held that individuals owning a *franchise* may obtain injunctions against unauthorized operators of a business. *See, e.g.*, *Jarrell*, 167 So. at 667 (noting that *Green v. Ivey*, 33 So. 711 (Fla. 1903), involved a franchise, which *Jarrell* distinguished from a taxi medallion). But that begs the question when the debate is whether Petitioners' medallions were franchises. If anything, that the State expressly charged the PTC with enforcement authority shows that the State, and the State alone, intended to enforce this statutory scheme, contrary to the common-law rights typically afforded to franchisees. *See Ivey*, 33 So. at 713–14.

ii. As a final point, "[t]he very notion that" that the 2012 act promised to preserve the medallion system is "beset by such difficulties that it is impossible to see how the concept could apply in practice." *Roth v. King*, 449 F.3d 1272, 1286 (D.C. Cir. 2006) (citation omitted). If the 2012 act effectively establish a contract right to Petitioners' medallions, could the Legislature amend the medallion system at all after the 2012 act? Or were Petitioners forever entitled to the law as it stood on July 1, 2012? And if the Legislature could amend the system, at what point would efforts to do so cross the line and subject the State to millions of dollars in takings liability?

"If a theory does not work in practice, there is usually something wrong with the theory." *LSP Transmission Holdings II, LLC v. FERC*, 28 F.4th 1285, 1291 (D.C. Cir. 2022). Here, Petitioners' theory leaves more questions than answers—a good indication that this Court should reject it.

II. The State did not take any compensable property right.

Even if Petitioners had some compensable interest in their medallions, the State did not take that interest when it dissolved the medallion system. At most, Petitioners' medallions granted them a right to drive taxicabs in the County. *See, e.g.*, *Checker Cab*, 899 F.3d

at 920. But the 2017 act did not eliminate their right to drive a taxi; it deregulated the field, allowing *anyone* to drive a taxi in Hillsborough County. For that reason, too, the State caused no taking. *See, e.g.*, 29A C.J.S. Eminent Domain § 131 (2023) ("Where a franchise is not by its terms exclusive, the grant of a similar franchise . . . is not a taking of the franchise, even though its value may be impaired or destroyed.").

As Petitioners explain, a franchise need not be "exclusive," in that the franchisee has the right to operate to the exclusion of all others. Init. Br. 23–24. And indeed, caselaw "overwhelmingly holds" that taxicab medallions do not confer a "property right" to an exclusive marketplace. *Checker Cab Operators*, 899 F.3d at 920 (collecting cases). A taxi medallion "does not create a right to be an oligopolist." *Joe Sanfelippo Cabs*, 839 F.3d at 615. It merely grants a right to operate a taxicab business that would otherwise be prohibited.

The 2017 dissolution act, however, did not eliminate Petitioners' right to operate a taxicab. That act merely eliminated the restriction placed on taxicab operation and Petitioners' State-created exceptions from that restriction. Ch. 2017-198, §§ 2–3. The result was not that Petitioners lost the right to operate a taxi; it was that everyone *gained*

the right to operate a taxi. The State therefore did not destroy the non-exclusive franchise that Petitioners claim their medallions represented. *See, e.g.*, *Ill. Transport. Trade Ass'n v. City of Chicago*, 839 F.3d 594, 596 (7th Cir. 2016); *Checker Cab*, 899 F.3d at 920; *see also A.B.C. Bus Lines, Inc. v. Urb. Mass Transp. Admin.*, 831 F.2d 360, 362 (1st Cir. 1987).

The County later instated a regulatory scheme restricting Petitioners' right to operate a taxi without a new medallion. *See* Vehicle for Hire Ordinance, §§ 7(A), 8(A). But Petitioners have never alleged that they are no longer operating taxis under the County's new ordinance. Nor did the State enact the County's new taxicab restriction; the County did that, and Petitioners have abandoned their claim that the County committed a taking. They cannot now foist responsibility onto the State for restrictions the County imposed after the State deregulated the field.

CONCLUSION

When the State expressly reserves its right to amend the statutory scheme that animates a statutory interest, it does not convey "any sort of 'vested right'" that amounts to "'property' within the meaning of the [Takings Clause]." *See Pub. Agencies*, 477 U.S. at 55.

Because the 2001 act expressly reserved the Legislature's power to dissolve the medallion system, it need pay no compensation for medallions abolished by the exercise of that power. Even if that reservation were not dispositive, Petitioners have cited nothing in the 2012 act that unmistakably established a legislative promise to preserve their medallions forever, no matter the cost to the State and its citizens.

In the end, Petitioners "are entitled to be disappointed by" the State's decision to deregulate the taxicab market in Hillsborough County, "but they are not entitled to be surprised." *Pittman*, 64 F.3d at 1104. Because the State took nothing for which it must pay compensation, the Court should approve the decision below.

Dated: December 1, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 1, 2023, a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal, or by email, to counsel for all parties of record.

/s/ David M. Costello
Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

I certify that this document complies with all applicable font and word-count requirements. It was prepared in 14-point Bookman Old Style font and contains 11,512 words.

/s/ David M. Costello
Deputy Solicitor General