UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Western Star Hospital Authority, Inc., d/b/a Metro Health EMS, *Plaintiff*, vs. City of Richmond and Richmond Ambulance Authority, *Defendant*s.	Case No.: 3:18-CV-00647-JAG **SECOND AMENDED COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Western Star Hospital Authority, Inc. (hereinafter Metro Health) alleges as follows upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters.

NATURE OF THE ACTION

Metro Health seeks relief from the City of Richmond and the Richmond Ambulance Authority's (RAA) unlawful conduct under the federal antitrust laws, the U.S. Constitution, and state law. Defendants have excluded and continue to exclude all competition from the market for non-emergency interfacility transport services in the area comprising Richmond, instead conferring a monopoly on themselves under the pretextual and vague guise of health and safety regulation. As a result, RAA is not subject to market discipline and its prices and quality of service are not competitive. This conduct violates the federal antitrust laws and is not exempt from liability under the state-action immunity.

The U.S. Department of Veterans Affairs awarded Metro Health the contract to provide its non-emergency interfacility transport services for the Richmond VA Medical Center after a competitive bidding process in which RAA also submitted a bid. Despite the award to Metro Health, defendants coopted this federal procurement by refusing to allow Metro Health to perform its services under the contract, asserting that the city prohibits EMS operations without a permit. Metro Health, eager to begin its contract without interference, cooperated by applying for a permit from the city.

Remarkably, the city first denied its request for a permit because it had not created an application process or even established criteria by which it would determine permit applications. It then invented self-serving criteria designed to preordain denial and thus protect defendants' monopoly rents. True to form, it denied Metro Health its permit.

Defendants continue to assert RAA's exclusive privilege to provide non-emergency transport in Richmond, and they continue to charge the VA supracompetitive prices and extract monopoly rents—each month depriving the VA of money that could instead be spent to fund a year's worth of healthcare for approximately ten veterans in the Richmond area. In other words, defendants have effectively preempted the prerogative of a U.S. cabinet-level department, interfered with its operations, extracted monopoly rents from it, caused the waste of hundreds of thousands of federal dollars earmarked for the care of our nation's heroes, and excluded all competition for their proprietary benefit.

Defendants claim that the state-action immunity and Virginia state law provide them with cover for this course of conduct. This argument proves too much:

- The state-action immunity is strictly limited and disfavored; defendants cannot meet their heavy burden to show that they acted pursuant to a clearly articulated state policy to displace competition in the market for non-emergency interfacility transport services. Virginia law may give cities some authority to regulate ***emergency*** medical services transportation as part of a larger scheme to assure coordinated 911 operations throughout the commonwealth. But that policy is not implicated here, as Metro Health does not take 911 calls or do anything but provide non-emergency service to the federal government. Virginia has not clearly articulated any policy suggesting defendants can regulate Metro Health's non-emergency operations, let alone altogether exclude it as a direct competitor.
- Even if Virginia state policy did provide for such authority, the statutory scheme qualifies that authority with prerequisites not satisfied here. Moreover, the state policy specifically carves out an exception relating to federal government operations.
- Even if Virginia state policy intended to allow cities unfettered discretion to monopolize markets and exclude their competitors (of course, that was not its intent), the state-action immunity is still inapplicable: a state cannot give a free pass to violate the antitrust laws.

- The RAA, which is not a municipality, cannot claim the narrow exception to active supervision established in *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985). It cannot show that it was actively supervised by the state itself in exercising its monopoly.
- Nor does the narrow *Hallie* exception apply to Richmond here. In *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101, 1113 (2015), the Supreme Court held that active supervision "is an essential condition of state-action immunity where a nonsovereign actor has 'an incentive to pursue [its] own self-interest under the guise of implementing state policies.' " (Citations omitted.) That incentive is blatantly obvious here.

Moreover, defendants' conduct violates the Supremacy Clause of the U.S. Constitution, deprives Metro Health of its constitutional rights, and interferes with its contract with the VA. Metro Health requests that this Court enjoin defendants' conduct and award Metro Health trebled damages, costs, and attorneys' fees.

JURISDICTION AND VENUE

1. This Court has primary subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1337(a), and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26 because this action arises under the antitrust laws of the United States. Moreover, this Court has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202 and the All Writs Act, 28 U.S.C. § 1651.

2. This Court has supplemental jurisdiction over the state-law claims of this complaint under 28 U.S.C. § 1367 because they arise from the same nucleus of operative facts as the federal claims such that they form part of the same case or controversy.

3. Defendants are subject to personal jurisdiction because they each reside in the Commonwealth of Virginia and in this district.

4. Venue is proper in the Eastern District of Virginia under 28 U.S.C. § 1391(b) and 15 U.S.C. §§ 15, 22 because defendants reside and can be found in this district and because a substantial part of the events giving rise to this complaint occurred in this district. More specifically, defendants conspired to restrain trade and monopolized the market for non-emergency interfacility transport in this district.

PARTIES

5. Plaintiff Western Star Hospital Authority, Inc. d/b/a Metro Health EMS is a minority family-owned and -operated company organized under the laws of the State of Georgia.

6. Defendant City of Richmond is a municipal political subdivision of the Commonwealth of Virginia with its principal place of business in Richmond, Virginia.

7. Defendant Richmond Ambulance Authority (RAA) is a public corporation organized under the laws of the Commonwealth of Virginia with its principal place of business in Richmond, Virginia. RAA was created and is controlled by the City of Richmond.

8. Defendants and their employees and agents participated personally in the unlawful conduct challenged in this complaint and, to the extent they did not personally participate, they authorized, acquiesced, set in motion, or otherwise failed to take necessary steps to prevent the acts complained of in this complaint.

9. Each defendant acted as the principal of or agent for the other defendant as to the acts, violations, and common course of conduct alleged in this complaint. Both defendants gained financially from the conduct described in this complaint.

SUBSTANTIVE ALLEGATIONS

10. Metro Health provides non-emergency interfacility ambulance transport services for the U.S. Department of Veterans Affairs under contracts awarded to Metro Health by the VA. It has been awarded competitively bid contracts by VA medical centers in Ohio, Pennsylvania, Georgia, Maryland, and Virginia.

11. Metro Health is authorized by the state to provide emergency and non-emergency ambulance transport services throughout the Commonwealth of Virginia because it is licensed to provide Advanced Life Support (ALS) and Basic Life Support (BLS) services. Importantly, however, Metro Health intends to provide only non-emergency interfacility transportation services under its contract with the VA. It does not respond to 911 dispatches or otherwise provide emergency medical services transportation.

12. In other words, Metro Health's operations exist entirely outside the statewide coordinated EMS system.

13. The VA has thousands of health care facilities in the United States, hundreds of which are in-patient medical centers. As part of its mission to provide medical care for our nation's military veterans, it must sometimes provide non-emergency medical transportation for its patients, including sometimes across state lines. Most of these non-emergency transports are for interhospital transfers, e.g. to other VA facilities that can provide scheduled treatments or transferring a VA beneficiary initially received at a non-VA facility for follow-on care. Other examples of non-emergency transport include transport to or from a VA facility to a nursing home or other long-term care facility, or where an eligible beneficiary is initially received at a non-VA facility.

14. These non-emergency interfacility transports are provided at the direction of the VA, for VA beneficiaries only.

15. The VA usually contracts with outside providers to provide these non-emergency transport services, selected as the best and lowest bidder after a competitive bidding process. The contracted providers are paid directly by the VA as provided by contract. Contracted providers do not bill the beneficiaries.

16. Prior to June 2018, the Richmond VA Medical Center utilized defendant Richmond Ambulance Authority to provide these non-emergency interfacility patient transport services. The VA had a contract with RAA only because RAA was the only provider in Richmond (by defendants' design).

17. RAA charged—and continues to charge—the VA a rate that is substantially higher than prevailing rates in similar competitive markets. It is able

to do so because defendants have, since at least 1993, excluded all competition in the non-emergency interfacility transport market and the emergency medical service transport market alike.

18. In April 2018, the VA issued a request for proposals to provide non-emergency interfacility transport services to and from the Richmond VA Medical Center. Metro Health, another private company, and RAA each submitted responsive bids to the VA.

19. In June 2018, the VA notified Metro Health that it had prevailed as the best and lowest bidder. But the VA stated that in order to commence the contract, Metro Health would need to obtain either (1) a permit or franchise from the city, or (2) a letter from the city acknowledging its awareness that Metro Health would be operating pursuant to the VA contract within the city. The VA's requirement was based on its concern that the city's enforcement efforts, however ill-conceived and unlawful, could result in either a delay while a patient is in transit or an interruption of service.

20. Metro Health had anticipated selection as the prevailing bidder and, in May 2018, had already spoken to numerous city officials. Some of those officials did not think a permit would be necessary because Metro Health would exclusively provide non-emergency interfacility transport to the federal government.

21. Immediately after the notification, Metro Health sought a letter of acknowledgment from the city. Lamont Doyle (COO of Metro Health) first contacted the city's legal department, which referred him to RAA. RAA, in turn, referred Metro

Health to the city's Office of Chief Administrative Officer (CAO). CAO initially agreed that all Metro Health would need is a letter of acknowledgment from the city's legal department.

22. But that quickly changed. The city's legal department said it was not authorized to provide such a letter, and that it must come directly from the city council (through CAO). Chelsi Bennett of CAO stated that it was not possible to get one until at least November, as it would first need to be sponsored by a councilmember and then placed on the agenda.

23. Then Ms. Bennett changed course and asserted Metro Health would need a permit or franchise. Mr. Doyle asked Ms. Bennett for an application and, remarkably, Ms. Bennett stated that the city did not even have any such application or any other process for obtaining a permit or franchise.

24. Mr. Doyle, who is based in Atlanta, stayed in Richmond for seven days in late June, each day going down to city hall and pressing various offices—the mayor's office, CAO, the city attorney's office, the fire department, and others—for an application. Each of these offices was either unhelpful or unresponsive or refused to even meet with Mr. Doyle.

25. Even after his stay in Richmond, Mr. Doyle consistently called and emailed various city officials. Most of these emails went unanswered. Only one person—Councilwoman Kimberly Gray—expressed any concern with assisting Metro Health.

26. Mr. Doyle came back to Richmond again July 12 or 13 to meet with Ms. Bennett at CAO. Mr. Doyle stated that because of the seriousness of the city's lack of responsiveness and the damage that it was causing Metro Health, Metro Health would have no choice but to sue the city. Only then did Ms. Bennett agree that the city would create an application—but claimed it wouldn't be ready until at least November.

27. Nevertheless, Mr. Doyle kept pushing and, finally, in August 2018, a reply email from the city's fire chief stated that Ms. Bennett had contacted him to assist in creating an application. Finally, in August 2018, the city posted an application to the fire department website. But again, the city stated it would not be approved until at least November.

28. The application and requirements were arbitrary, extreme, and unfair. Among the criteria were four times the amount of liability insurance required by state law. The application also sought competitively sensitive information that defendants could use to their advantage in future bids and an extraordinary amount of unnecessary information. On information and belief, the criteria and application were designed to result in a denial. And, oddly enough, none of it had been approved by the city council, even though city officials had so often professed that their hands were tied to do anything absent approval from the council.

29. Metro Health subsequently submitted its application. The fire department actually approved the application, but the city council—recognizing the competitive threat—denied it in December 2018 (and took its time in doing so—about

two months). All in all, the city gave Metro Health the run around for nearly six months before officially reaching its preordained result.

30. Rather than accept the VA's decision, or protest the bid through lawful channels, defendants sought to prevent Metro Health from performing the contract by abusing and exceeding their regulatory authority. They leveraged their government power to foreclose a competitor from their market.

31. In the meantime, defendants have profited from their unlawful and capricious conduct at the expense of our nation's military veterans. RAA continues to hold its monopoly and charges the VA its supracompetitive prices—which are significantly higher than the VA would pay if Metro Health or any other legitimate competitor were providing these services.

32. Under the contract, the VA's monthly costs for non-emergency interfacility transport would be approximately $150,000 to $180,000. RAA, on the other hand, currently charges the VA $250,000 to $350,000 per month for the same services.

33. That is, for every month that defendants continue their unlawful practices, they collect at least $100,000 monopoly rents from the VA, a cabinet-level department of the United States that is already seriously underfunded. Each month, defendants are effectively stealing at least $100,000 from our nation's heroes by

depriving them of healthcare funding—approximately as much as ten veterans' ***annual*** healthcare costs.[1]

The Relevant Market

34. The relevant service market is the market for non-emergency interfacility transport. Non-emergency interfacility transport is a service that facilitates the transfer of an existing, stable patient from one facility to another. There are various reasons why a patient might require transportation, but it is primarily to transfer them to and from a facility that provides treatments, scheduled in advance, that the patient's facility does not provide. For example, a nursing home patient may need to have a scheduled hip replacement surgery at a hospital. In the case of the VA, different VA medical centers have different capabilities and specialist programs. One VA medical center might have a heart center, while another might have a brain trauma rehabilitation clinic. So in-patient VA beneficiaries are often transported to these specialist clinics.

35. Non-emergency transports are provided on a convenience, rather than emergent, basis. A patient that is not stabilized is not eligible for a non-emergent interfacility transfer and would require an EMS transport.

36. There is no reasonable substitute for non-emergency interfacility transport. EMS transport ***could*** be provided in lieu of non-emergency interfacility transport, as EMS transport vehicles typically have all of the equipment and facilities

1. The national average annual healthcare cost per veteran was approximately $10,000 in 2013. *See* https://www.npr.org/2015/01/13/376134776/va-data-show-disparities-in-veteran-benefits-spending. That figure may have risen.

required for non-emergent patient transport (the reverse is not necessarily true). But EMS transport is significantly more expensive and removing EMS transport vehicles from the pool of available resources might adversely impact the statewide prehospital EMS system. Moreover, non-emergency interfacility transport is not a reasonable substitute for EMS transport because EMS transport requires significantly more resources, is very time-sensitive, and requires more manpower (including paramedics with specialized experience in EMS care).

37. Additionally, the consumers of non-emergency interfacility transport are typically different from the consumers of EMS transport. Consumers of non-emergency interfacility transport are usually medical facilities, which typically have contracts for an exclusive provider or otherwise control which provider is used. Consumers of EMS transport are usually individual pre-hospital patients. Patients usually initiate a request for pre-hospital EMS transport by dialing 911 (unless one is initiated for them, such as by a family member, neighbor, or police officer on the scene). Thus, a change in the price of EMS transport is unlikely to substantially affect the market or pricing for non-emergency interfacility transport, and vice-versa. The services are distinct markets.

38. The relevant geographic market is the area comprising Richmond and the close surrounding area. While non-emergency interfacility transport often involves travel of a patient outside of Richmond, the consumers of non-emergency interfacility transport do not travel outside of Richmond to obtain non-emergency interfacility transport. This is demonstrated by the fact that each VA medical center

obtains its own non-emergency interfacility transport provider with non-emergency transport vehicles based in the immediate vicinity. Providers are based locally because traveling significant distances just to begin a transport dramatically increases the costs of operation. Thus, there is limited cross-elasticity of demand for non-emergency transport within and outside the area comprising Richmond.

Harm to Plaintiff and Competition

39. Defendants' restraints have harmed competition: they have excluded all competition and extracted monopoly rents. For example, the VA is currently paying at least $100,000 per month more than it would if Metro Health were to provide its services. Other consumers of non-emergency interfacility transport in the Richmond market have likewise been forced to do business with RAA and pay its supracompetitive prices.

40. Metro Health has also been harmed by defendants' conduct: it has lost business and has been prevented from performing a contract with the VA. This injury includes, among other things, a complete loss of revenue for the Richmond market, the continued payment of unavoidable overhead costs, lost profits, and lost opportunities, and lost customer goodwill. In fact, if Metro Health were not excluded, it would achieve economies of scale that further reduce its expenses and increase its margins nationwide and provide further expansion opportunities into other markets. Metro Health also hired employees to staff its Richmond operations and has had to provide those employees with inferior, part-time opportunities in locations far away from their homes. Each day that Metro Health continues to be excluded, those

employees' morale suffers and the risk that they will leave for other opportunities becomes greater.

41. Other providers have also been excluded from the market. For example, Richard Ally is an ambulance provider who attempted to obtain a permit in 2013 and 2014 and was turned away by the city.

Interstate Commerce

42. Defendants' restraints have had a substantial effect on interstate commerce for several reasons.

43. The VA is a federal agency that is using federal (and thus interstate) funds to pay for its non-emergency interfacility transport.

44. The VA's non-emergency transport needs often extend beyond the boundaries of the Commonwealth of Virginia. The Richmond VA Medical Center often requests non-emergency transports to out-of-state VA medical centers, including, for example, Maryland. The same is likely also true of other consumers of non-emergency interfacility transport services to out-of-state specialist centers such as Johns Hopkins or the Cleveland Clinic.

45. Non-emergency transport often requires transportation on federal instrumentalities—interstates and highways.

46. All markets relating to healthcare necessarily affect interstate commerce. Healthcare bills—including non-emergency interfacility transport bills (though not at the VA) are usually paid by insurance companies located throughout the United States processed through banks throughout the United States.

State Action Immunity Does Not Apply

47. The state-action immunity is a strictly limited and "disfavored" exemption from the antitrust laws. *FTC v. Phoebe Putney*, 568 U.S. 216, 225 (2013) (quoting *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992)). It exists solely to balance the federal interest in antitrust enforcement with states' interests in exercising their residual power to regulate. Cities are not entitled to the state-action immunity unless they show, at a minimum, that they acted pursuant to a clearly articulated state policy to displace competition. The question is whether the particular anticompetitive policy "is indeed the policy of a State." *N.C. Dental*, 135 S. Ct. at 1112.

48. A state policy should be interpreted narrowly—even if it authorizes some minor anticompetitive regulation in certain markets, that authorization cannot be imputed to other markets or other forms or greater degrees of anticompetitive conduct. *Phoebe Putney*, 568 U.S. at 235 ("[R]egulation of an industry, and even the authorization of discrete forms of anticompetitive conduct pursuant to a regulatory structure, does not establish that the State has affirmatively contemplated other forms of anticompetitive conduct that are only tangentially related.").

49. Virginia has not clearly articulated a policy to displace competition in the market for non-emergency interfacility transport services. Though Virginia law appears to provide the city with some authority to displace competition in the market for emergency medical services transport, it does not clearly articulate authority for any displacement of competition in the separate market for non-emergency

ambulance transport. Indeed, the state EMS policy is grounded in the need for a coordinated statewide 911 system that is wholly separate from non-emergency transport.

50. More specifically, the Virginia Assembly enacted a statewide comprehensive scheme for the creation of a statewide "comprehensive, coordinated, ***emergency*** medical services system" designed to reduce patient waiting times and provide access to high quality emergency medical services for all citizens of Virginia. Va. Code § 32.1-111.3 (emphasis added). The state's intent was thus expressly limited to ensuring adequate, comprehensive emergency transport.

51. In furtherance of those goals, the act also authorized its political subdivisions limited regulatory authority to "assure the provision of adequate and continuing ***emergency*** medical services." Va. Code § 32.1-111.14 (emphasis added). Cities and counties are only authorized to enact such regulations after notice and a public hearing finding as a matter of fact that the exercise of such powers is "necessary to assure the provision of adequate and continuing emergency medical services . . . ." *Id.* The city has not provided such notice, held a public hearing, or found as a matter of fact that the exclusion of all competition in the non-emergency interfacility transport market is "necessary to assure the provision of adequate and continuing emergency medical services."

52. Under the act, " '***Emergency*** medical services' or 'EMS' means health care, public health, and public safety services used in the medical response to the real or perceived need for ***immediate*** medical assessment, care, or transportation and

preventative care or transportation in order to ***prevent loss of life or aggravation*** of physiological or psychological illness or injury." Va. Code § 32.1-111.1 (emphasis added). Non-emergency transport, by definition, falls outside of the plain meaning of the statute.

53. Nothing in the act suggests that Virginia political subdivisions such as the city have the power to displace competition for non-emergency transport services, or that such entities shall have the power to exclude competing providers of such services. Indeed, such a displacement would not serve Virginia's stated policy goals.

54. Even if the state had intended for its policy to apply more broadly to non-emergency services (notwithstanding its limiting definition and its ubiquitous use of the word "emergency"), the act specifically exempts "[e]mergency medical services agencies operated by the United States government" from all provisions of the act. Va. Code § 32.1-111.2(2). Thus, even if state policy were to extend to the separate service market for non-emergency transport, it would not apply to the VA or its chosen agent.

55. To the extent the state policy purports to allow a political subdivision complete discretion to displace all competition in favor of its own proprietary interests, the state-action immunity does not apply. *Parker v. Brown*, 317 U.S. 341, 351 (1943) (states cannot "give immunity to those who violate the Sherman Act by authorizing them to violate it").

56. Defendants are not entitled to state-action immunity because the market-participant exception to state-action immunity applies. Defendants are a

market participant that abused and overreached their perceived regulatory authority to further their own interests and to thwart their competitors (and specifically a competitor who prevailed against them in a competitive bidding process).

COUNT I

Monopolization, 15 U.S.C. § 2

57. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

58. Section 2 of the Sherman Act, 15 U.S.C. § 2 provides:

> Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.

59. Defendants possess monopoly power in the market for non-emergency interfacility transport in the Richmond area. They have the power to exclude competition and have exercised that power in favor of themselves, together holding 100% market power in the area comprising Richmond.

60. Through the conduct described herein, defendants have willfully maintained that monopoly power by anticompetitive and exclusionary conduct. They acted with the intent to maintain this monopoly power, and the illegal conduct has enabled them to do so in violation of Section 2 of the Sherman Act.

61. The market has been harmed as a result of defendants' conduct, as consumers of non-emergency interfacility transport have been forced to pay supracompetitive prices while receiving lower quality service. The VA, for example,

is forced to pay at least an overcharge of $100,000 more per month for these services than it would under its competitively bid contract.

62. Metro Health provides superior non-emergency interfacility transport at substantially lower prices.

63. Metro Health has been harmed by defendants' willful maintenance of their monopoly and their exclusion of all competitors. They have already suffered direct losses of approximately $150,000 to $180,000 per month.

64. The Local Government Antitrust Act, 15 U.S.C. §§ 35–36, does not apply because the city exceeded its lawful authority and engaged in *ultra vires* acts, and therefore was not acting in its official capacity. It was not acting in its capacity to govern, but rather as a market participant operating RAA. The LGAA, like all immunities and exemptions from the antitrust laws, is disfavored and must be strictly and narrowly construed. Moreover, it does not apply to claims seeking injunctive relief under 15 U.S.C. § 26.

COUNT II

Attempted Monopolization, 15 U.S.C. § 2

65. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

66. Defendants willfully engaged in a course of conduct, including anticompetitive and exclusionary actions, with the specific intent of monopolizing the market for non-emergency interfacility transport in the area of Richmond, and there

is a dangerous probability that, unless restrained, anticompetitive conditions will occur, in violation of Section 2 of the Sherman Act.

67. The market has been harmed as a result of defendants' conduct, as consumers of non-emergency interfacility transport have been forced to pay supracompetitive prices while receiving lower quality service. The VA, for example, is forced to pay at least $100,000 more per month for these services than it would under its competitively bid contract.

68. Metro Health provides superior non-emergency interfacility transport at substantially lower prices.

69. Metro Health has been harmed by defendants' willful maintenance of their monopoly and their exclusion of all competitors. They have already suffered direct losses of approximately $150,000 to $180,000 per month.

70. The Local Government Antitrust Act, 15 U.S.C. §§ 35–36, does not apply because the city exceeded its lawful authority and engaged in *ultra vires* acts, and therefore was not acting in its official capacity. It was not acting in its capacity to govern, but rather as a market participant operating RAA. The LGAA, like all immunities and exemptions from the antitrust laws, is disfavored and must be strictly and narrowly construed. Moreover, it does not apply to claims seeking injunctive relief under 15 U.S.C. § 26.

COUNT III

Preemption, U.S. Const. art. VI, cl. 2

71. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

72. The Competition in Contract Act (CICA), 41 U.S.C. § 3301, provides that executive agencies of the United States, "in conducting a procurement for property or services . . . shall obtain full and open competition through the use of competitive procedures" and must either "solicit sealed bids" or "request competitive proposals." It must make awards based on merit, including "price and other price-related factors."

73. The U.S. Department of Veterans Affairs, an executive agency of the United States, requested bids for the provision of non-emergency interfacility transport services for the Richmond VA Medical Center.

74. The VA selected Metro Health as the lowest and best bidder for the Richmond VA Medical Center contract.

75. Through their purported "regulation" of emergency medical services, defendants have prevented Metro Health from commencing the contract. Their actions were taken specifically for the purpose of thwarting the required federal competitive bidding process and to ensure that RAA remains the only available provider of non-emergency interfacility transport for the Richmond VA Medical Center.

76. Defendants' regulations and conduct directly conflict with federal law and are therefore preempted under the Supremacy Clause of the U.S. Constitution.

77. Moreover, defendants' conduct amounts to a direct interference with revenue and an interference with the prerogative of the U.S. Government and is therefore unconstitutional. *M'Culloch v. Maryland*, 17 U.S. 316, 329 (1819).

78. Metro Health has been harmed as a direct result of defendants' unconstitutional conduct.

79. Metro Health requests that this Court declare defendants' regulations and conduct preempted and enjoin them from continuing to enforce the regulations.

COUNT IV

Due Process, 42 U.S.C. § 1983

80. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

81. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to pursue their legitimate economic business, subject only to regulations that are rationally related to a legitimate government purpose.

82. The City of Richmond's EMS and non-emergency transport regulatory scheme, and its use of that scheme to prevent Metro Health from competing with the city and RAA's proprietary interests violates Metro Health's right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983

on its face and as applied because it was specifically designed to keep competitors of the city's proprietary business, RAA, out of the market.

83. The city's conduct proves this. Until its hand was forced by Metro Health's lawful, persistent petitioning, the city flatly prohibited anyone without a permit, but never bothered to establish an application process or enact an ordinance setting forth eligibility criteria. This is because the ordinance was a mere pretext to prevent the operation of any business in competition with RAA.

84. Only after Metro Health won the VA contract and persistently insisted on "permission" to operate did the city finally establish, ad hoc and without procedural regularity, criteria and an application for a permit or franchise. The criteria and application contents were specifically designed with the pretext of denying Metro Health's application and thus preventing it from exercising its economic liberty.

85. Notably, the city denied Metro Health's application on the basis of a lack of "need" without providing substantial reasoning or factual finding by the decisionmakers. This was arbitrary and capricious for two reasons. First, as a matter of fact, the U.S. Government certified the "need" for Metro Health to operate by awarding it as the prevailing bidder in its request for proposals. Second, as a matter of law, the determination of need is not rationally related to any legitimate government objective, i.e., the protection of health, safety, or welfare.

86. Notably, the Commonwealth of Virginia has determined that Metro Health qualifies under state law to operate its non-emergency interfacility transport service and has issued a license allowing it to do so.

87. Although state economic regulation is ordinarily due deference, a city's pretextual use of coercive power to further its proprietary—rather than regulatory—interests should be subject to greater scrutiny. Even if rational basis review is employed, it "does not demand judicial blindness to the history of a challenged rule or the context of its adoption nor does it require courts to accept nonsensical explanations for regulation." *St. Joseph Abbey v. Castille*, 712 F.3d 215, 226 (5th Cir. 2013).

88. Both defendants are state actors for purposes of constitutional law. Both defendants conspired to deprive Metro Health of its right to due process, both substantive and procedural.

89. Unless defendants are enjoined from committing the above-described constitutional violations, Metro Health will continue to suffer irreparable harm.

COUNT V

Equal Protection, 42 U.S.C. § 1983

90. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

91. The city did not subject RAA, its previous provider of EMS transport, or any applicant since to the criteria and application process that it subjected on Metro Health.

92. By requiring Metro Health to comply with an arbitrary and irrelevant permitting process that is not rationally related to any legitimate public health and safety concern but was instead designed to pretextually prevent Metro Health from engaging in a legitimate business that competes with defendants' proprietary interests, the city is treating Metro Health differently without any basis to do so.

93. Both defendants are state actors for purposes of constitutional law. Both defendants conspired to deprive Metro Health of its right to equal protection.

94. Unless defendants are enjoined from committing the above-described equal protection violation, Metro Health will continue to suffer irreparable harm.

COUNT VI

Contracts Clause, U.S. Const. art. I, § 10 cl. 1

95. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

96. The Contracts Clause of the U.S. Constitution provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

97. Metro Health was awarded as prevailing bidder a four-year contract to provide non-emergency interfacility transport for the Richmond VA Medical Center.

98. The city made changes to its regulatory scheme for the specific purpose to prevent Metro Health from commencing work under the contract.

99. The city undermined Metro Health's contractual bargain, interfered with its reasonable expectations, and prevented Metro Health from safeguarding its rights, thus substantially impairing its rights to the contract.

100. The city did not have a significant and legitimate public purpose. Rather, it undertook the impairment for the sole purpose of protecting its subsidiary's proprietary market activities.

101. Both defendants are state actors for purposes of constitutional law. Both defendants conspired to impair Metro Health's contract.

102. Unless defendants are enjoined from impairing Metro Health's contract, Metro Health will continue to suffer irreparable harm.

COUNT VII

Tortious Interference with Contract or Business Expectancy

103. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

104. Metro Health was awarded prevailing bidder of a four-year contract with the U.S. Department of Veterans Affairs as its exclusive provider of non-emergency interfacility transport for the Richmond VA Medical Center.

105. Metro Health had a valid business expectancy for the same as the prevailing bidder.

106. Defendants were aware of Metro Health's contract or business expectancy. In fact, RAA was a competitor and losing bidder.

107. Defendants intentionally interfered with Metro Health's contract or business expectancy by abusing their regulatory authority and arbitrarily and capriciously denying Metro Health's request for a mere letter of acknowledgement and its application for a permit or franchise. This interference caused a disruption of the contract or business expectancy.

108. Defendants employed improper methods to interfere with Metro Health's contract or business expectancy. More specifically, defendants imposed inapplicable EMS regulations to Metro Health's non-emergency interfacility transport operations, employed stall tactics to prevent Metro Health from applying for a permit, arbitrarily and capriciously denied the application, and violated the federal antitrust laws by foreclosing competition.

109. Metro Health has been damaged as a direct result of defendants' interference. Its contract or business expectancy was supposed to commence in June 2018 and has not commenced to date. Metro Health is suffering direct losses of over $100,000 per month. Defendants, meanwhile, are unjustly enriching themselves by $250,000 to $350,000 each month.

REQUEST FOR RELIEF

WHEREFORE, Metro Health requests that this Court:

A. Enter a preliminary injunction against defendants to enjoin them from continuing their illegal acts under 15 U.S.C. § 26;

B. Declare that defendants' conduct violates Section 2 of the Sherman Act, the U.S. Constitution, and Virginia state law;

C. Declare that defendants are not entitled to immunity from damages, interest, fees, and costs under 15 U.S.C. §§ 35–36 because they acted as market participants rather than as government entities merely regulating or interacting with private actors or because their acts were *ultra vires* under Virginia law;

D. Enter judgment against defendants;

E. Award Metro Health compensatory damages in three times the amount sustained by it as a result of defendants' actions, to be determined at trial as provided in 15 U.S.C. § 15(a);

F. Award Metro Health pre- and post-judgment interest at the applicable rates on all amounts awarded, as provided in 15 U.S.C. § 15(a);

G. Award Metro Health its costs and expenses of this action, including its reasonable attorneys' fees necessarily incurred in bringing and pressing this case, as provided in 15 U.S.C. §§ 15(a) and 26;

H. Award Metro Health compensatory damages for violations of its constitutional rights as provided in 42 U.S.C. § 1983;

I. Award Metro Health its costs and attorneys' fees as provided in 42 U.S.C. § 1988(b);

J. Grant permanent injunctive relief under 15 U.S.C. § 26 to prevent the recurrence of the violations for which redress is sought in this complaint; and

K. Order any other such relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

DATED: February 8, 2019

Alex Taylor Law, PLC

s/ *Alexander L. Taylor*
Alexander L. Taylor, Esq.
1622 West Main Street
Richmond, VA 23426
alextaylor@alextaylorlaw.com
804.239.9232
866.446.6167 (fax)

Local Counsel for Plaintiff

The Carter Law Firm
Eleazer R. Carter, Esq. (admitted *phv*)
105 South Brooks Street
P.O. Box 187
Manning, SC 29102
U.S. District Court ID No. 5086
eleazercarter@aol.com
803.435.0550

Lead Counsel for Plaintiff

Bona Law PC
Aaron R. Gott (admitted *phv*)
4275 Executive Square, Suite 200
La Jolla, CA 92037
858.964.4589
858.964.2301 (fax)
aaron.gott@bonalawpc.com

Antitrust Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Jonathan Holland Hambrick
jay.h.hambrick@usdoj.gov

Wirt P. Marks, IV
Wirt.Marks@Richmondgov.com

Alex Taylor Law, PLC

s/ *Alexander L. Taylor*
Alexander L. Taylor, Esq.
1622 West Main Street
Richmond, VA 23426
alextaylor@alextaylorlaw.com
804.239.9232
866.446.6167 (fax)